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JOURNAL
OF
DEBATES AND PROCEEDINGS
IN THE
CONVENTION OF DELEGATES,

CHOSEN TO REVISE THE
Constitution of Massachusetts,

Begun and holden at Boston, November 16, 1820, and continued by Adjournment to January 9, 1821.

REPORTED FOR THE BOSTON DAILY ADVERTISER.
NEW EDITION,
REVISED AND CORRECTED.

BOSTON:
PUBLISHED AT THE OFFICE OF THE DAILY ADVERTISER.
1853.

TK 315
1821
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DOCUMENT
DEPT

Entered according to Act of Congress, in the year 1868, by

NATHAN HALE AND CHARLES HALE,

In the Clerk's Office of the District Court of Massachusetts.

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Dutton & Wentworth, Printers, 37 Congress Street.

NO 1868  
AUG 1868

## P R E F A C E .

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THE present Report of the Proceedings and Debates of the Convention which assembled at the State House in Boston, November 15, 1820, to revise the Constitution of Massachusetts, was first published, from day to day, in the Boston Daily Advertiser, during the session of the Convention, and was then issued in the form of a volume, immediately after its adjournment in 1821, the printing having been carried on during the session. A part of the edition was ordered by the Convention to be distributed among the members and other persons, and the remaining copies were immediately taken up by the public. It has been in considerable request at various times, but not to such extent as was deemed sufficient to indemnify the expense of a new edition. The recent call of a new Convention, for another revision of the Constitution, has awakened so much interest in the proceedings of that of 1820, as to induce the reprint now presented to the public.

It has been considered important by the Editors that no material alterations should be made in the text. Although there are, perhaps, some portions of the volume which possess less general interest at the present time than others, and might have been omitted without detracting from its value, and although, from the haste with which the original report was prepared, there were doubtless some expressions in it which might have been improved upon a careful revision, the Editors, nevertheless, thought that the confidence of the public would be justly shaken in the accuracy of the volume, as a true record of the proceedings of the Convention, if it were not the same as that printed contemporaneously with its sittings, the errors of which, if any existed, would have then been immediately exposed.

The official journal was ordered by the Convention to be deposited in the office of the Secretary of the Commonwealth; but there is on a file of papers relating to the Convention, a contem-

porary memorandum of the then Secretary, stating that it was never placed there, and it is not known where it is. The present volume, therefore, the first edition of which went through the press before the journal could have been completed, probably affords the only record in existence, of the proceedings of the Convention.

The Editors have accordingly confined themselves to the correction of the few obvious accidental errors which have been discovered on a careful revision. They intended to supply such documents or other material omissions, had there been any, which might have arisen from the haste in which the original edition was published, but no opportunity for this occurred, the original volume being, they believe, complete up to the date of its publication, embracing all the reports and other papers of any importance, which came under consideration. They have added in an Appendix, such documents of a subsequent date, as appeared necessary to complete the history of the Convention.

Where it has been thought expedient to interpolate any remarks in the text, such additions have been uniformly enclosed in square brackets, [ ] so as to distinguish them from the original text. The present volume, from the first of the pages numbered with Arabic numerals as far as the Appendix, with the exception of the brief additions thus marked, and the correction of the few obvious errors above alluded to, contains all, and only, the matter of the first edition.

The Appendix embraces a number of documents of a date subsequent to the adjournment of the Convention, which are necessary to the completeness of its history, viz. :

A Statement of the Votes of the People, by Counties, on the several amendments proposed to them by the Convention. This statement is given as printed in the Boston Daily Advertiser, at the time, but as the footings agree with those officially reported by the Committee of the Convention to the Legislature, it may probably be relied on, as an accurate copy from the official returns. No official canvass of the vote by towns or counties, has been found at the State House. Also, the Proceedings of the Committee of the Convention appointed to meet after the people had voted upon the amendments, and ascertain the result. These proceedings are copied from their original report, submitted to the Legislature, preserved in the office of the Secretary of the Com-

monwealth. Also, the action of the Legislature upon this report, —the Resolve passed for publishing the amendments—and the Governor's Proclamation promulgating them.

Appended to these will be found the whole of the Constitution in its official shape, as originally established, with the amendments since adopted, not only at the recommendation of the Convention of 1820, but subsequently in the manner provided by that body.\*

The copious Index of the original edition of this volume, has been carefully revised, and made to conform with the present edition. It is believed to be correct.

N. H.

Boston, April 25, 1853.

C. H.

\* In 1844, Hon. Luther S. Cushing prepared a draft of the Constitution of Massachusetts by striking out the annulled or obsolete portions of the instrument and inserting the amendments in their proper places. This draft has been usually printed since that time as the Constitution. It fully answered the purpose for which it was designed, viz., "for the convenient use of those who desire to ascertain what the existing provisions of the Constitution are, without the trouble and labor of tracing them historically from the original instrument through all the various amendments." Its use, however, is likely to cause confusion, when a particular article or chapter is referred to, if the reader does not distinctly bear in mind its character.



## NOTE.

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### *Origin and History of the Constitution of Massachusetts.*

THE royal charter under which the Colony of Massachusetts had been governed, continued in force, to some degree, even after the beginning of the revolutionary contest. Its authority, however, was almost entirely overthrown by the adoption, by the Continental Congress, May 15, 1776, of the resolution declaring "that the exercise of every kind of authority under the crown should be suppressed," and that "all the powers of government" should be "exerted under the authority of the people of the colonies." July 4, 1776, Independence was declared. In September, 1776, the Massachusetts Assembly voted to take steps towards the framing of a form of government. May 5, 1777, they recommended to the people to choose their representatives to the next General Court, "with full powers, in one body with the Council, to form such a Constitution of Government as they shall judge best calculated to promote the happiness of this State," to be subject to the approval of a vote of two-thirds of the people. At the session of June, 1777, a Committee of twelve was charged with this subject. In January, 1778, this Committee reported a draft of a Constitution, which was adopted by the General Court, February 28, 1778, and submitted to the people, March 4, 1778. It was, however, thought to be defective and unsatisfactory in many respects; objections were made to the anomalous nature of the body by which it had been framed;—and it was *rejected* by a large majority—five to one of the votes returned. Many of the towns made no returns.

The failure of this first effort to establish a permanent form of government, showed the necessity of proceeding with more care and deliberation. Accordingly, the General Court, by a resolve, passed February 20, 1779, directed the selectmen of towns to cause the inhabitants to consider of and determine upon two questions: "Whether they choose at this time, to have a new Constitution or Form of Government made," and, "Whether they will empower their representatives for the next year, to vote for the calling a State Convention for the sole purpose of forming a new Constitution," in case the first question were answered affirmatively. The people assented to both of these propositions, by large majorities. Accordingly, the General Court, by a resolve passed June 17, 1779, provided for the election of delegates to a Convention to meet on the first of September in that year.

The delegates accordingly assembled September 1, 1779, and having settled the principles upon which the government should be based, appointed a Committee of thirty to prepare a Declaration of Rights and frame of a Constitution, adjourned over to October 28, authorizing the towns not represented to choose delegates meanwhile. The Committee of thirty met immediately, and after discussion, delegated the preparation of the Declaration of Rights to John Adams; and the preparation of a draught of a Constitution, to a sub-committee of three, viz., James Bowdoin, Samuel Adams, and John Adams, who committed this task also to John Adams. He was thus the original author of the whole instrument; and with a few alterations his draughts appear to have been preserved. In the fourth volume of his Works, now publishing under the editorial supervision of Charles Francis Adams, the original draughts are printed in such a way as to exhibit the nature and extent of the changes made. That volume also contains much inter-

esting information upon the subject. The Journal of the Convention of 1779-80, was printed in 1832, by Messrs. Dutton & Wentworth, by order of the Legislature, on the recommendation of the Joint Committee of the Library, of which Alexander H. Everett was chairman.

When the Convention reassembled, October 28, 1779, the Committee of Thirty reported the Bill of Rights and Frame of Government agreed upon. Some progress was made in discussing it, until the 11th of November, when the Convention adjourned to the fifth of the next January, hoping to secure a more full and constant attendance. January 5, 1780, the Convention again met, but the roads being in a bad condition for travelling, the attendance was small. The members met and adjourned from time to time, until January 27, when a sufficient number being collected they proceeded to business. Having finally agreed upon the Form of the Constitution, March 2, 1780, they adjourned to the first Wednesday of June, making provision for obtaining the opinion of the people upon it in the meanwhile. They also adopted an address to the people.

June 7, 1780, the members again assembled, and it appearing that the whole form was approved by more than a two-thirds vote, the Convention, June 16, 1780, declared "the said form to be the Constitution of Government established by and for the inhabitants of the State of Massachusetts Bay," and resolved that it go into effect, except for the purpose of making elections, on the last Wednesday of October in that year.

The Constitution provided for ascertaining the sense of the people in 1795, on the necessity or expediency of revising the instrument, with a view to making amendments. No such necessity or expediency was then found to exist; and the Constitution remained unaltered for forty years. During the latter part of this period, the expediency and necessity of some amendments began to be seriously discussed, particularly in relation to the third article of the Bill of Rights—the excessive number of representatives in the popular branch of the Legislature—the apportionment of senators—and especially the important change in the condition of the Commonwealth, produced by the establishment of the District of Maine as a separate State. Finally it was determined by the Legislature of 1820, that a revision of the Constitution had become necessary, and accordingly the act of 1820, relating to the calling of a Convention, with which this Journal begins, was passed. August 21, the people voted, 11,756 yeas to 6,593 nays, in favor of having a Convention, as announced by Proclamation of the Governor, September 12. The election of delegates took place October 16, and the Convention assembled November 15. Its doings are recorded in the present volume. They resulted in proposing fourteen amendments to the Constitution, of which nine were approved by the people and became a part of the Constitution. Subsequently four more amendments have been added, in the manner provided for by the ninth article of amendment. They will be found at the end of the present volume, with the dates of their adoption.

Finally the Legislature of 1851 passed an act providing for a new Convention to revise the Constitution, but the proposition was rejected by the people, by a vote of 60,972 in the affirmative and 65,846 in the negative. A similar act was passed by the Legislature of 1852, which was assented to by the people, by 66,416 in the affirmative and 59,111 in the negative, and in accordance with its provisions, delegates were chosen on the 7th of March last, to meet in Convention at the State House in Boston, May 4, 1853.

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## ADVERTISEMENT TO THE FIRST EDITION.

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THIS Report of the Proceedings and Debates in the Convention was made for the Boston Daily Advertiser by the Editor of that paper, who was a member of the Convention, assisted by a gentleman of the bar, [Octavius Pickering, Esq., afterwards, for many years, Reporter of Decisions of the Supreme Judicial Court,] to whom a seat was assigned by the President. The principal design was to furnish the public, from day to day, with an account of the proceedings, through that paper; and to this design the report was necessarily made to conform. For a great part of the session, the proceedings of each day were published in the morning paper of the following day; the reporters were in consequence obliged to prepare their reports in the greatest haste; and in cases in which the sittings continued to a great length of time, and especially when two sittings were held on the same day and protracted to a late hour in the evening, it became necessary, as well on account of the short interval for transcribing, as from regard to the capacity of the paper, to abridge the debate to a greater degree than they would otherwise have done. Many of the reported speeches are to be considered rather as abridgments, than as full reports of those which were delivered. It was, in general, the object of the reporters, to give the whole argument in substance, without being scrupulously careful to adhere to the language of the several speakers. In this design, however, they may occasionally have failed; sometimes, from not hearing distinctly—sometimes, perhaps, from not fully understanding the scope of the argument, and sometimes from not being able, through fatigue, to give proper attention. For these reasons, it will not be supposed that complete justice is done to the different speakers, in point of elegance and propriety of expression,

or that the same degree of justice is done to each, in regard to fullness and accuracy ; but the reporters have endeavored, according to the best of their ability, to give as full and accurate a report of the debates as circumstances would admit.

JANUARY, 1821.

# COMMONWEALTH OF MASSACHUSETTS.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND TWENTY.

## AN ACT

### RELATING TO THE CALLING A CONVENTION OF DELEGATES OF THE PEOPLE, FOR THE PURPOSE OF REVISING THE CONSTITUTION.

**SECT. 1.** *Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same,* That the inhabitants of the several towns, districts, and places within this Commonwealth, qualified to vote for Senators or Representatives in the General Court, shall assemble in regular town meetings, to be notified in the usual manner, on the third Monday of August next, and shall, in open town meeting, give in their votes, by ballot, on this question: "Is it expedient that Delegates should be chosen, to meet in Convention, for the purpose of revising, or altering the Constitution of Government of this Commonwealth?" And the selectmen of the said towns and districts shall, in open town meeting, receive, sort, count, and declare, and the clerks thereof shall, respectively, record the votes given for and against the measure; and exact returns thereof shall be made out, under the hands of a majority of the selectmen, and of the clerk, who shall seal up and deliver the same to the sheriff of the county, within one week from the time of meeting, to be by him transmitted to the office of the Secretary of the Commonwealth, on or before the second Monday in September next; or the selectmen may themselves transmit the same to said office, on or before the day last mentioned; and all returns not then made, shall be rejected in the counting. And the Governor and Council shall open and examine the returns made as aforesaid, and count the votes given on the said question; and the Governor shall, by public proclamation, to be made on or before the third Monday in said month of September, make known the result, by declaring the number appearing in favor of choosing Delegates for the purpose aforesaid, and the number of votes appearing against the same: And if it shall appear that a majority of the votes given in, and returned as aforesaid, are in favor of choosing delegates as aforesaid, the same shall be deemed and taken to be the will of the people of the Commonwealth, that a Convention should meet accordingly; and in case of such majority, the Governor shall call upon the people to elect delegates to meet in Convention, in the manner hereinafter provided.

**SECT. 2.** *Be it further enacted,* That if it shall be declared by the said proclamation that the majority of votes as aforesaid is in favor of choosing delegates as above-mentioned, the inhabitants of the several towns and districts within the Commonwealth, now entitled to send one or more representatives to the General Court, shall, on the third Monday in October next, assemble in town meeting, to be duly notified by warrant from the selectmen, and shall elect one or more delegates, not exceeding the number of representatives to which such town is entitled, to meet delegates from other towns in Convention, for the purposes hereinafter expressed: And at such meeting of the inhabitants, every person entitled to vote for representatives in the General Court shall have a right to vote in the choice of delegates; and the selectmen shall preside at such elections; and shall, in open meeting, receive, sort, count, and declare the votes, and the clerk shall make a record thereof, fair copies of which, attested by the selectmen and clerk, shall be seasonably delivered to each person chosen a delegate as aforesaid. And all the laws now in force, regulating the duty and conduct of town officers, sheriffs, magistrates, and electors, in the elections of governor, lieutenant governor, counsellors and senators, and representatives, shall,

as far as applicable, apply and be in full force and operation as to all meetings holden, and elections and returns made under this act, or which, by this act, are required to be holden or made, and upon the like forfeitures and penalties.

SECT. 3. *Be it further enacted,* That the persons so elected delegates shall meet in Convention, in the State House in Boston, on the third Wednesday in November next; and they shall be the judges of the returns and election of their own members, and may adjourn from time to time, and one hundred of the persons elected shall constitute a quorum for the transaction of business; and they shall proceed, as soon as may be, to organize themselves in Convention, by choosing a president, and such other officers as they may deem expedient, and by establishing proper rules of proceeding; and when organized, they may take into consideration the propriety and expediency of making any, and if any, what alterations or amendments in the present Constitution of Government of the Commonwealth; and such amendments, when made and adopted by the said Convention, shall be submitted to the people for their ratification and adoption, in such manner as the said Convention shall direct; and if ratified by the people in the manner directed by the said Convention, the Constitution shall be deemed and taken to be altered or amended accordingly; and if not so ratified, the present Constitution shall be and remain the Constitution of Government of this Commonwealth.

SECT. 4. *Be it further enacted,* That the said Convention shall establish the pay or compensation of its officers and members, and the expense of its session; and His Excellency the Governor, by and with the advice and consent of the Council, is authorized to draw his warrant on the Treasurer therefor.

SECT. 5. *Be it further enacted,* That the Secretary of the Commonwealth be and he hereby is directed, forthwith after the passage thereof, to transmit printed copies of this act to the selectmen of every town and district within the said Commonwealth; and whenever the Governor shall issue his proclamation, calling upon the people to elect delegates to meet in Convention as aforesaid, the said Secretary shall also, immediately thereafter, transmit printed copies of said proclamation, attested by himself, to the selectmen of every town and district in said Commonwealth.  
[Approved by the Governor, June 16th, 1820.]

# CONVENTION OF DELEGATES

*Assembled at the State House in Boston, November 15th, 1820, for the purpose of revising the Constitution of Massachusetts, in pursuance of the law of June 16th.*

## LIST OF DELEGATES.

### SUFFOLK.

*Boston*—His Honor William Phillips, Hon. William Gray, Isaac Parker, Charles Jackson, Thomas Dawes, John Davis, William Prescott, Artemas Ward, James Prince, Esq., Rev. James Freeman, Hon. John Phillips, Josiah Quincy, Peter C. Brooks, John Welles, Israel Thorndike, Daniel Davis, Jonathan Hunewell, Rev. Thomas Baldwin, Thomas Melville, Esq., Hon. William Sullivan, Redford Webster, Esq., George Blake, Esq., Hon. Daniel Webster, John T. Apthorp, Esq., Benjamin Russell, Esq., Daniel Messinger, Esq., Warren Dutton, Esq., Joseph Coolidge, Esq., Mr. John Cotton, Lemuel Shaw, Esq., Joseph Tilden, Esq., Doct. John C. Warren, William Harris, Esq., Samuel Hubbard, Esq., Rev. Paul Dean, Mr. Eliphalet Williams, James T. Austin, Esq., Mr. William Sturgis, James Savage, Esq., Mr. Heman Lincoln, Rev. Henry Ware, Nathan Hale, Esq., Mr. Samuel A. Welles, Mr. Lynde Walter, Mr. George Bond.

*Chelsea*—Rev. Joseph Tuckerman.

### ESSEX.

*Amesbury*—John Morse, Esq., Enoch Bartlett.

*Andover*—John Kneeland, Stephen Barker.

*Beverly*—Rev. N. W. Williams, Deacon John Low, Hon. Nathan Dane,\* Hon. Robert Rantoul.

*Boxford*—Thomas Perley.

*Bradford*—Deacon Daniel Stickney, Jesse Kimball, Jun., Esq.

*Danvers*—Ebenezer Shillaber, Caleb Oakes, John Page, Ebenezer King.

*Essex*—Jonathan Story.

*Gloucester*—Col. William Pearce, John Kittredge, Esq., Capt. William W. Parrott, Nehemiah Knowlton, Col. William Beach, Capt. Elias Davidson.

*Hamilton*—Jonathan Lamson.

*Haverhill*—Hon. Bailey Bartlett, Col. Charles White, Moses Wingate, Esq.

*Ipswich*—John Heard, Nathaniel Wade.

*Lynn*—Joseph Fuller, Jonathan Batchelder, Enoch Mudge, Jun., John Lovejoy, Ezra Mudge.

*Lynnfield*—Asa T. Newhall.

*Manchester*—Col. David Colby.

*Marblehead*—Nathan Hooper, Joshua Prentiss, Jun., Benjamin Knight, Nathan Martin, John H. Gregory.

*Methuen*—Stephen Barker.

*Middleton*—Rev. Ebenezer Hubbard.

*Newbury*—Josiah Little, Esq., Richard Pike, Esq., Moses Little, Esq.

*Newburyport*—Rev. John Andrews, Hon. Samuel S. Wilde, William Bartlett, William B. Bannister, James Prince, Dr. Nathan Noyes.

*Roxley*—Parker Cleaveland, Joshua Jewett.

*Salem*—Hon. Benjamin Pickman, Joseph Story, Leverett Saltonstall, Gideon Barstow, Esq., David Cummings, Esq., Stephen White, Esq., John G. King, Michael Shepherd, John Derby, Jun.

*Salisbury*—Samuel March, Benjamin Evans.

*Saugus*—Jonathan Makepeace.

*Topshfield*—Cyrus Cummings.

*Wenham*—John Dodge.

*West Newbury*—Thomas Hills.

### MIDDLESEX.

*Acton*—Joseph Noyes, Esq.

\* [Did not attend.]



*Ashby*—John Locke.  
*Billerica*—Joseph Locke.  
*Bedford*—William Webber.  
*Brighton*—Francis Winship.  
*Burlington*—None.  
*Cambridge*—Levi Farwell, Peter Tufts, Jun., Hon. Samuel P. P. Fay.  
*Carlisle*—Benjamin Barrett.  
*Charlestown*—Seth Knowles, William Austin, Thomas Harris, Leonard M. Parker, George Bartlett, Timothy Thompson, Jun.  
*Chelmsford*—Amos Whitney, Jonathan Pelham.  
*Concord*—Samuel Hoar, Jun., Esq., John Keyes, Esq.  
*Dracut*—Hon. Joseph B. Varnum.  
*Dunstable*—Benjamin Rice.  
*East Sudbury*—Jacob Reeves, Esq.  
*Frammingham*—John Trowbridge, Esq., Josiah Adams, Esq.  
*Groton*—Luther Lawrence, Esq., Hon. Samuel Dana.  
*Holliston*—Elihu Cutler, Esq.  
*Hopkinton*—Joseph Valentine, Esq., Nathan Phipps.  
*Lexington*—Nathan Chandler, Esq.  
*Lincoln*—Samuel Hoar, Esq.  
*Littleton*—Rev. Edmund Foster.  
*Malden*—Elder Ebenezer Nelson, Phineas Sprague.  
*Marlborough*—Joel Cranston.  
*Medford*—Nathaniel Hall, Abner Bartlett.  
*Natick*—Jonathan Bacon.  
*Newton*—Gen. Ebenezer Cheney, Joseph Jackson, Esq.  
*Pepperell*—John Walton, Abel Jewett.  
*Reading*—Daniel Flint, Timothy Wakefield.  
*Sherburne*—Calvin Sanger.  
*Shirley*—Nathaniel Holden, Esq.  
*South Reading*—William Nichols.  
*Stonham*—None.  
*Stow and Boxborough*—Joseph Stone.  
*Sudbury*—William Hunt, Esq.  
*Teutonsbury*—Jesse Trull.  
*Townsend*—Samuel Brooks, Esq.  
*Tyngsborough*—None.  
*Waltham*—John Clark, David Townsend.  
*Watertown*—Walter Hunsnewell.  
*West Cambridge*—Hon. William Whittemore.  
*Westford*—John Abbott.  
*Weston*—Isaac Fiske, Esq.  
*Wilmington*—William Blanchard, Jun.  
*Woburn*—John Wade, Marshall Fowle.

#### WORCESTER.

*Ashburnham*—Silas Willard.

*Athol*—Joseph Eastabrook.  
*Barre*—Nathaniel Jones, Nathaniel Houghton.  
*Berlin*—Amos Sawyer.  
*Bolton*—Nathaniel Longley.  
*Boylston*—Jonathan Bond.  
*Brookfield*—Simeon Draper, Seth Field.  
*Charlton*—John Spurr, Isaiah Rider.  
*Dana*—Ephraim Whipple.  
*Douglas*—Welcome Whipple.  
*Dudley*—William Windsor.  
*Fitchburg*—John Shepley, Calvin Willard.  
*Gardner*—William Whitney.  
*Grafton*—Pardon Aldrich.  
*Hardwick*—Timothy Page, Joseph Stone.  
*Harvard*—Thomas Hersey, Rev. Abisha Samsop.  
*Holden*—William Drury.  
*Hubbardston*—Ephraim Allen.  
*Lancaster*—Jacob Fisher, Davis Whittman.  
*Leicester*—Henry Sargent.  
*Leominster*—Bezaleel Lawrence, Joseph G. Kendall.  
*Lunenburg*—Josiah Stearns, Esq.  
*Mendon*—Hon. Jonathan Russell, Dr. Daniel Thurber.  
*Milford*—Ezek Greene.  
*Millbury*—Aaron Pierce.  
*New Braintree*—Joseph Bowman.  
*Northborough*—James Keyes.  
*Northbridge*—Rev. John Crane.  
*North Brookfield*—Daniel Gilbert.  
*Oakham*—William Crawford, Jun.  
*Oxford*—Richard Olney.  
*Paxton*—Jonathan P. Grosvenor.  
*Petersham*—Hutchins Hapgood, Israel Houghton.  
*Phillipston*—John Doane.  
*Princeton*—Ward N. Boylston.  
*Royalston*—Rufus Bullock.  
*Rutland*—Zadock Gates.  
*Shrewsbury*—Nathan Pratt.  
*Southborough*—Rev. Jeroboam Parker.  
*Southbridge*—Nathan H. Harding.  
*Spencer*—James Draper, Jun.  
*Sterling*—Thomas H. Blood, John Robins, Jun.  
*Sherbridge*—Rev. Zenas L. Leonard.  
*Sutton*—Hon. Jonas Sibley, Darius Russell.  
*Templeton*—Lovell Walker.  
*Upton*—Ezra Wood.  
*Uxbridge*—Hon. Bezaleel Taft, Samuel Reed.  
*Ward*—John Clark.  
*Westborough*—Nathan Fisher, Esq.  
*West Boylston*—Robert B. Thomas.  
*Weston*—Chester Powers.

*Westminster*—Jonas Whitney, Edward Kendall.

*Winchendon*—Samuel Prentiss.

*Worcester*—Abraham Lincoln, Esq., Hon. Levi Lincoln, Edward D. Bangs, Esq.

### HAMPSHIRE.

*Ankerst*—Hon. Ebenezer Mattoon, Israel Scott.

*Belchertown*—Eliabim Phelps, Philo Dickinson.

*Chesterfield*—Barnabas Billings.

*Cummington*—Nehemiah Richards.

*Easthampton*—Thaddeus Clapp.

*Goshen*—Timothy Lyman.

*Granby*—Eli Dickinson.

*Greenwich*—None.

*Hadley*—Moses Porter, Samuel Porter.

*Hatfield*—Oliver Smith.

*Middlefield*—David Mack, Jun., Esq.

*Northampton*—Hon. Joseph Lyman, Hon. Samuel Hinckley, Ebenezer Hunt, Jun.

*Norwich*—Artemas Knight.

*Pelham*—Rev. Winthrop Bailey.

*Plainfield*—James Richards, Esq.

*South Hadley*—Peter Allen.

*Southampton*—Luther Edwards.

*Ware*—William Bowdoin.

*Westhampton*—Rev. Enoch Hale.

*Wilkesburg*—John Wells.

*Worthington*—Hon. Ezra Starkweather.

### HAMPDEN.

*Blandford*—Enos Boyse, Abner Gibbs.

*Brimfield*—Israel E. Trask, John Wyles.

*Chester*—Martin Phelps.

*Granville*—Amos Foote, Francis Stebbins.

*Holland and South Brimfield*—Charles Gardner.

*Longmeadow*—Calvin Burt.

*Ludlow*—Alfred Flower.

*Monson*—Ede Whitaker, Deodatus Dutton.

*Montgomery*—Oren Parks.

*Palmer*—Amos Hamilton.

*Russell*—None.

*Southwick*—Enos Foote, Joseph Forward.

*Springfield*—Hon. George Bliss, Hon. Jonathan Dwight, Jun., Moses Chapin, Oliver B. Morris.

*Tolland*—Henry Hamilton.

*Westfield*—Hon. Samuel Fowler, Jedediah Taylor, Jesse Farnham.

*West Springfield*—Luther Frink, Timothy Horton, James Kent.

*Wilbraham*—Abel Bliss, Jun., Luther Stebbins.

### FRANKLIN.

*Ashfield*—Henry Bassett, Levi Cook.

*Barnardston*—Jonathan Allen.

*Buckland*—Enos Pomeroy.

*Charlemont*—Asahel Judd.

*Codraine*—Robert L. McLellan, George Eels.

*Conway*—John Arms.

*Deerfield*—Hon. Ephraim Williams, Hon. Elihu Hoyt.

*Gill*—Seth S. Howland.

*Greenfield*—Elijah Alvord.

*Hawley*—Zenas Banks.

*Heath*—Jesse Gale.

*Leverett*—Roswell Field.

*Leyden*—Elisha Chapin.

*Montague*—Rev. Aaron Gates.

*New Salem*—Varney Pierce.

*Northfield*—Rev. Thomas Mason.

*Orange*—Josiah Cobb.

*Rose*—None.

*Shelburne*—Benoni Pratt.

*Statesbury*—John Conkey, Jun.

*Sunderland*—Nathaniel Smith.

*Warwick*—Jonathan Blake, Jun.

*Wendell*—Hon. Joshua Green.

*Whately*—Thomas Sanderson.

### BERKSHIRE.

*Adams*—John Waterman, James Mason.

*Alford*—Elihu Lester, Esq.

*Becket*—George Conant.

*Cheshire*—Rev. Samuel Bloss.

*Clarksburg*—None.

*Dalton*—John Chamberlain.

*Egremont*—James Baldwin, Esq.

*Florida*—None.

*Great Barrington*—Moses Hopkins.

*Hancock*—Rodman Hazard.

*Hinsdale*—Artemas Thompson.

*Lancaster*—William H. Tyler.

*Lee*—James Whiton.

*Lenox*—Caleb Hyde.

*Mount Washington*—None.

*New Ashford*—None.

*New Marlboro'*—Gen. Ebenezer Hyde, Salmon Kasson.

*Otis*—Col. Samuel Picket.

*Peru*—Cyrus Stowell.

*Pittsfield*—Nathan Willis, Henry H. Childs, Jonathan V. Clark.

*Richmond*—Zechariah Pierson.

*Sandisfield*—Church Smith, Eliakim Hull.

*Southfield*—None.

*Savoy*—None.

*Sheffield*—Stephen Dewey, Silas Kellogg.

*Stockbridge*—Joseph Woodbridge.

*Tyringham*—John Garfield, Esq.

*Washington*—Philip Eames.

*West Stockbridge*—Col. Joseph B. Hill.

*Williamstown*—Allanson Porter, Stephen Hosford.

*Windsor*—Daniel Dana.

#### NORFOLK.

*Bellingham*—Benjamin Hall.

*Braintree*—Rev. Richard S. Storrs.

*Brookline*—Hon. Richard Sullivan.

*Canton*—Jonathan Leonard.

*Cohasset*—James C. Doane.

*Dedham*—Hon. John Endicott, Hon. James Richardson, William Ellis, Esq.

*Dorchester*—Hon. Perez Morton, Henry Gardner, Thomas Crehore.

*Foxborough*—Seth Boyden, Esq.

*Franklin*—Joseph Bacon, Eli Richardson, Jun.

*Medfield and Dover*—Rev. Dr. Daniel C. Saunders.

*Medway*—William Felt.

*Milton*—Barney Smith, Jedediah Atherton.

*Needham*—Aaron Smith.

*Quincy*—Hon. John Adams, Thomas Greenleaf.

*Randolph*—Thomas French.

*Roxbury*—Henry A. S. Dearborn, Ebenezer Seaver, Abijah Draper, Sherman Leland.

*Sharon*—Benjamin Reynolds, Esq.

*Stoughton*—Samuel Talbott.

*Walpole*—Jesse Boyden.

*Weymouth*—Lemuel Humphrey, Noah Torrey.

*Wrentham*—Samuel Day,\* Allen Tillinghast, Samuel Bugbee.

#### PLYMOUTH.

*Abington*—Nathan Gurney, Jared Whitman.

*Bridgewater*—Daniel Howard, Daniel Mitchell, Howard Cary, Zeph Fobes.

*Carver*—Benjamin Ellis.

*Duxbury*—Rev. John Alleyne, Samuel A. Frazer.

*Halifax*—Zebediah Thompson.

*Hanover*—Robert Eells.

*Hanson*—Calvin Tilden.

*Hingham*—Rev. Joseph Richardson, Jotham Lincoln, Jun., Thomas Fearing.

*Hull*—None.

*Kingston*—George B. Holmes.

*Marshfield*—Rev. Martin Parris.

*Middleborough*—Hon. Thomas Weston, John Tinkham, Samuel Pickens, Levi Pierce, Seth Miller, Jun.

*Pembroke*—David Oldham, Jun.

*Plympton*—None.

*Plymouth*—Barnabas Hedge, John B. Thomas, Joseph Bartlett, Jun., Benjamin Bramhall, Nathaniel M. Davis.

*Rochester*—Abraham Holmes, Gideon Barstow, Jun., Philip Crandon.

*Scituate*—Hon. Charles Turner, Jesse Dunbar, John Collamore.

*Wareham*—Benjamin Bourne, Esq.

#### BRISTOL.

*Attleborough*—Jabez Newell, Abiathar Richardson, Jun., Lemuel May.

*Berkley*—Jabez Fox.

*Dartmouth*—Hon. Holder Slocum, Elihu Slocum, Caleb Anthony.

*Dighton*—William Wood.

*Easton*—Shepherd Leach, Esq., Isaac Lathrop, Alden Spooner,\* Thomas Nye.\*

*Fairhaven*—None.

*Freetown*—Hon. Nathaniel Morton, Jun., Earl Sampson.

*Mansfield*—Solomon Pratt.

*New Bedford*—John A. Parker, James Howland, 2d,\* Seth Russell, Silas Kempton.

*Norton*—George Walker, Seth Hodges.

*Raynham*—Silas Hall.

*Rehoboth*—James Bliss, Jeremiah Wheeler, Samuel Bullock.

*Seekonk*—Robert Daggett, Joseph Sisson, Jun.

*Somerset*—David Gray.

*Swansey*—Daniel Hale, John Mason.

*Taunton*—Jonas Godfrey, James L. Hodges, Thomas Lincoln, Nathan Leonard, Robert Dean.

*Troy*—William B. Cannedy.

*Westport*—Abner B. Gifford, Tillinghast Almy, Nathan C. Brownell.

*Wellington*—Thomas S. Baylies, Esq.

#### BARNSTABLE.

*Barnstable*—Nymphas Marston, William Lewis, Nailor Crocker.

*Brewster*—Gen. Elijah Cobb.

*Chatham*—Capt. Salathiel Nickerson, Capt. Joseph Young.

*Dennis*—Oren Howe.

*Eastham*—Samuel Freeman.

*Falmouth*—Thomas Fish, Braddock Dimmick.

*Harwich*—None.

*Orleans*—Daniel Cumings.

*Provincetown*—None.

*Sandwich*—Russell Freeman, Elisha Pope, Seth F. Nye.

*Tyng*—None.

*Wellfleet*—Reuben Arey.

*Yarmouth*—Elisha Doane, Hon. John Reed.

#### DUKES.

*Chilmark*—None.

*Edgartown*—Thomas Cook, Jun.

*Tisbury*—Shubael Dunham.

#### NANTUCKET.

*Nantucket*—Josiah Hussey, Hezekiah Barnard, Jethro Mitchell, Gideon Folger, William Mitchell, Barker Burnell.

# IN CONVENTION.

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WEDNESDAY, NOVEMBER 15.

The Delegates elected to meet in Convention for the purpose of revising the Constitution of this Commonwealth, in pursuance of the act of the 16th of June last, assembled at the State House in the Representatives' Chamber.

At 10 o'clock, his Honor WILLIAM PHILLIPS, the Lieut. Governor, and a delegate for the town of Boston, called the House to order. The Hon. JUDGE JACKSON of Boston, Mr. PICKMAN of Salem, Mr. FAY of Cambridge, Mr. SIBLEY of Sutton, and Mr. FOWLER of Westfield, were appointed a committee to examine the credentials of the members and report whether a quorum was present. The committee having reported that a sufficient number of members were duly elected to proceed to business, it was voted that the House proceed to the choice of a Secretary, and the Hon. Judge STORY of Salem, Mr. GREENLEAF of Quincy, RUSSELL of Mendon, Mr. PRINCE of Boston, and Mr. BLISS of Springfield, were appointed a committee to receive and count the votes. The ballots being taken, the committee reported that the whole number of votes for Secretary was 275, and that there were 191 for Benjamin Pollard, Esq. and that he was chosen. Mr. Pollard was called in, and was sworn to the faithful performance of the duties of the office.

It was voted that the House proceed to the choice of a President, and it was ordered that the same committee receive and count the votes. The ballots being taken and counted, the committee reported that the whole number of votes was 353, necessary for a choice 171, that the Hon. JOHN ADAMS had 335, and was chosen.

This vote being declared, the Hon. Chief Justice PARKER of Boston, rose to offer a resolution to the House. After adverting to the advanced age and renowned character of the gentleman who had been chosen to preside over the deliberations of the House, and to the fact that he had been forty years ago a representative in the Convention which formed the Constitution that the House was now called upon to revise, he suggested the propriety of paying him some tribute of respect. He said it would be recollected that from the years 1765 to the Revolution, Mr. Adams was one of the most distinguished assertors of the freedom of his country, and made the boldest stand in defence of its rights. By recurrence to the journals of the day, it would be found that the political research and great talents displayed in the public proceedings, had great in-

fluence in exciting the spirit of the Revolution. He said that it was remarkable that one so ardent in the support of his opinions was able to check his own feelings and those of the public, and to observe a temperate course so honorable to him and to the country. In 1770, when the country was in alarm and under a great excitement in consequence of the killing and wounding of citizens by the British soldiers stationed in Boston, this firm and resolute man, though he had been opposing the encroachments of the British government, had the hardihood to come forward in defence of the soldiers, and show that the laws were to govern. In 1774 he was elected to the Continental Congress and was one of the most distinguished members of that body. Though he did not draft the declaration of independence, he was one of the most able and resolute supporters of it. In 1779, he was chosen one of the Delegates to the Convention for the purpose of forming the Constitution of this Commonwealth. And in that body his labors were conspicuous. He carried to it a degree of profound knowledge which few men have possessed, and to that we are indebted for many of the excellent provisions of the Constitution. He was soon after appointed by Congress on a mission to Europe for the purpose of conciliating the favor of and obtaining assistance from the nations on the Continent. He had the ability and address to persuade the cautious Dutch that it was for their interest to advance money for carrying on the war of the revolution. He remained in Europe during the war, where he performed great services to his country, and had the courage to obtain a treaty of peace on favorable terms to us, contrary to the wishes of our principal ally. On his return to this country he was received with unreserved public applause. He was afterwards associated in the government with Washington as Vice President of the United States, and succeeded him as President. He had since lived in honorable retirement and had preserved to a late period the vigor of his mind, of which he had given frequent proofs. He had finally been chosen by the unanimous voice of his townsmen to represent them in this Convention. Under these circumstances, he (the Chief Justice) thought it proper to pay him the testimony of their respect, and he proceeded to read the following resolution:—

Whereas the Hon. JOHN ADAMS, a member of this Convention and elected the President thereof, has for more than half a century devoted the great powers of his mind and his profound wisdom and learning to the service of his country and of mankind:

In fearlessly vindicating the rights of the North American provinces against the usurpation and encroachments of the superintendent government:

In diffusing a knowledge of the principles of civil liberty among his fellow subjects, and exciting them to a firm and resolute defence of the privileges of freemen:

In early conceiving, asserting and maintaining the justice and practicability of establishing the independence of the United States of America:

In giving the powerful aid of his political knowledge in the formation of the constitution of this his native state, which constitution became in a great measure the model of those which were subsequently formed:

In conciliating the favor of foreign powers—and obtaining their countenance and support in the arduous struggle for independence:

In negotiating the treaty of peace which secured forever the sovereignty of the United States, and in defeating all attempts to prevent it, and especially in preserving in that treaty the vital interests of the New England States:

In demonstrating to the world in his defence of the constitutions of the several United States, the contested principle, since admitted as an axiom, that checks and balances in legislative power, are essential to true liberty:

In devoting his time and talents to the service of the nation in the high and important trusts of Vice President and President of the United States.

And lastly, in passing an honorable old age in dignified retirement, in the practice of all the domestic virtues, thus exhibiting to his countrymen and to posterity an example of true greatness of mind and of genuine patriotism:

Therefore *Resolved*, that the members of this Convention, representing the people of the Commonwealth of Massachusetts, do joyfully avail themselves of this opportunity to testify their respect and gratitude to this eminent patriot and statesman, for the great services rendered by him to his country, and their high gratification that at this late period of life, he is permitted by Divine Providence to assist them with his counsel in revising the constitution, which forty years ago his wisdom and prudence assisted to form.

*Resolved*, that a committee of                    members be appointed by the chair to communicate this proceeding to the Hon. John Adams, to inform him of his election to preside in this body and to introduce him to the chair of this Convention.

These resolutions being seconded by the Hon. HOLDER SLOCUM and read from the chair, on motion of the Hon. Mr. WEBSTER, the blank was filled with twelve, and it was ordered that the committee should be nominated from the chair. The following gentlemen were appointed: Hon. Messrs. GRAY of Boston, VARNUM of Dracut, MORTON of Dorchester, Mr. FISHER of Westborough, Rev. Dr. BALDWIN of Boston, Messrs. DANE of Beverly, STARKWEATHER of Worthington, BOYLSTON of Princeton, Gen. MATTOON of Amherst, Mr. MELVILLE of Boston, Hon. Messrs. HOAR of Lincoln and BARTLETT of Haverhill. Mr. STARKWEATHER not having taken his seat, the Hon. Mr. FOWLER of Westfield was appointed in his place.

Mr. DANA of Groton observed, that nobody was more ready to accord in a tribute of praise to the venerable President elect, than himself. Yet, perhaps, he might not vote, in this case, precisely for the same reason, and on the same grounds, as were stated in the preamble to the resolve. This preamble, among other things, alluded to the efforts of the venerable gentleman, in defeating the intrigues against the peace of 1783. This was founded on a supposition, that the Court of France had entered into intrigues, on that occasion, against the United States. He doubted whether there was such evidence of that fact, as that we ought to assert it. This resolution would be read abroad, as well as at home, and we ought to be careful therefore as to what is alleged. He believed that no public history had given an account of such intrigues; and we were in possession of no regular documents to prove the allegation. He doubted therefore the propriety of making this declaration, under such circumstances.

Mr. BLAKE of Boston expressed his satisfaction with the preamble as it stood. He believed it to be true, and that documents existed by which it could be proved.

Judge DAVIS of Boston said it was a delicate subject, and doubted whether the expression might not usefully be modified. It was

desirable, he thought, to avoid anything which might be injuriously interpreted.

Chief Justice PARKER observed, that he should be sorry that the preamble should contain anything which should not be satisfactory to every gentleman present. He had no doubt, however, of the truth of this part of it. He had the pleasure of knowing a gentleman, now a citizen of Maine, an early friend to this country, and an enlightened friend to the liberties of all countries, and who was at that time in a situation to command the best sources of information; and from him, as well as from other sources, he had been satisfied as to the truth of the statement in the preamble in this particular. He wished, however, to avoid anything which might lead to a protracted discussion, and should be quite willing to adopt any modification of the expression which should render the resolution more conformable to the sense of the gentlemen present.

Judge STORY observed, that he had a view of this question, somewhat different from that taken by the Hon. gentleman from Groton. The preamble to these resolutions professed to contain a short summary of the political services of the eminent and distinguished man, who had just been elected President of this body—and, for his part, he should have thought that enumeration of services most unsatisfactory, if it had not made mention of this, in his opinion, most important and essential public service. He believed no act of the venerable gentleman's life had been more marked with firmness, ability and undaunted courage. To pass over this, would be, he thought, to deprive him of one of his best earned and most valued laurels. If this affair had not become matter of history, it was time it had. Its truth was well known to those of this generation, who had attended to the subject, and who were acquainted with the history of the treaty of 1783—and he thought nothing more fit than that an expression of the sense of this Convention, on this important topic, should now be made, since the truth of the fact, he presumed, existed in the knowledge and belief of every gentleman present. He gave to this resolution his most cordial support on all accounts, and not the least on account of the just tribute paid to the private virtues of the object of it; virtues, by which it is shown how much the value of distinguished talents is increased by an association with spotless character, and the qualities which dignify retirement.

A modification was subsequently made in the phraseology of this part of the preamble, by the Hon. mover; after which the resolutions were *unanimously* adopted.

The committee then proceeded to wait on the President elect, and the resolution was read to him by the Hon. Mr. MORRIS. On the return of the committee to the House they made report, and communicated the following written answer from Mr. Adams in which he declined the appointment.

*"Fellow Citizens—An election at my age and in my circumstances, by the free suffrages of so ample a representation of the fortunes and talents, the experience and*

wisdom—the authority, the virtues and the piety of the ancient and renowned state of Massachusetts, I esteem the purest and fairest honor of my life, and my gratitude is proportionally ardent and sincere. I pray you, gentlemen, to present to the Convention my most cordial thanks.

“Your enumeration of services performed for this country, recalls to my recollection the long services and succession of great and excellent characters with whom I have had the honor to act in the former part of my life, and to whose exertions I have endeavored to add my feeble aid; characters who have been employed by Divine Providence, as instruments in preserving and securing that unexampled liberty which this nation now possesses.

“That liberty which is the source of all our happiness and prosperity—a prosperity which cannot be contemplated by any virtuous mind without gratitude, consolation and delight—may it be perpetual. Gentlemen, as my age is generally known,\* it will readily be believed that my forces are too far exhausted to perform the arduous duties of the high office which the benevolence of the Convention has assigned to me.

“I am therefore under the necessity to request permission of the Convention to decline the appointment, and to pray that some other gentleman may be elected, whose vigorous age, and superior talents, may conduct their deliberations with more convenience to themselves, and with greater satisfaction to the people of the Commonwealth at large.

JOHN ADAMS.”

This answer having been read, on motion of the Hon. Mr. BLISS, it was resolved that the House proceed to the choice of a President in the place of the Hon. JOHN ADAMS, who declined the appointment. It was ordered that the Hon. Messrs. WELLS of Boston, LYMAN of Northampton, LINCOLN of Worcester, DAVIS of Plymouth, and SULLIVAN of Brookline, be a committee to receive and count the votes. The ballots being taken, the committee reported that the whole number of votes was 388, necessary for a choice 195, that the Hon. ISAAC PARKER had 195, and was chosen. The other votes were for Hon. Judge STORY 130, Hon. John PHILLIPS 52, and eleven scattering.

This result being declared, Chief Justice PARKER addressed the House in substance as follows:

He said he felt highly honored by the appointment. That he had been for thirty years unaccustomed to the proceedings of deliberative bodies, and was probably not so competent as many gentlemen about him to perform the duties of the office; but he felt it his duty to accept, trusting that many gentlemen more versed in the forms of proceedings in legislative bodies would aid him with their advice and counsel. He could undertake that in the exercise of his duties he would be strictly impartial, and that he would be ready to listen to the superior wisdom of those about him. If he had preconceived opinions with respect to the constitution they should not interfere with the impartial discharge of his duty. It would be one object to preserve order in the deliberations and proceedings of the House. This would not be difficult, seeing how the House was composed, being a fair representation of a people remarkable for their habits of order and decorum. With respect to anything in which greater experience was requisite, he should rely on the aid of gentlemen capable of rendering the assistance he should

\* [Mr. Adams was born Oct. 30, 1735. He was accordingly at this time in the 86th year of his age.]



require. He proceeded to declare his acceptance of the appointment, and was conducted to the chair.

On motion of Gen. VARNUM of Dracut, it was ordered that the Secretary be directed to furnish a competent number of copies of the Constitution of the Commonwealth interleaved, for the use of the members of the House.

On motion of Mr. PRINCE of Boston, the House resolved that they would now attend prayers. On the invitation of the President, the Rev. Dr. FREEMAN led in the devotions of the House.

On motion of the Hon. Mr. MORTON of Dorchester, it was ordered that a chair should be provided on the right of the President, and appropriated as the permanent seat of the Hon. JOHN ADAMS.

On motion of Lieut. Governor PHILLIPS, modified at the suggestion of Judge DANA, it was ordered, that a committee be appointed for arranging the seats of the members, and providing suitable seats for the accommodation of His Excellency the Governor and the members of the Council when they should choose to attend the Convention. This committee consisted of Messrs. Dana, Russell of Boston, Parker of Charlestown, Abbott of Westford, and Hunt of Northampton.

On motion of Mr. RUSSELL of Boston, a committee was appointed on the election and returns of delegates, consisting of Messrs. DANA, RICHARDSON of Dedham, HUBBARD of Boston, CUMMINGS of Salem, BANGS of Worcester, HODGES of Taunton, and MOSES PORTER of Hadley.

On motion of Mr. SHAW of Boston, it was ordered that a committee be appointed to report Rules and Orders for the regulation of the House, and that in the mean time the rules and orders of the House of Representatives be the rules of the Convention as far as they are applicable. This committee was composed of Messrs. Shaw, Leland of Roxbury, Saltonstall of Salem, Locke of Ashby, and Parker of Charlestown.

Mr. WEBSTER of Boston presented the remonstrance of Gamaliel Bradford and others inhabitants of Charlestown, against the election of Leonard M. Parker, one of the delegates returned for that town, on account of the irregular proceedings of the selectmen who presided at the election. The ground of objection is, that a vote having passed to elect six delegates, and a ballot for six having resulted in the choice of five persons only, a motion was made that the vote should be rescinded so far as related to the election of a sixth—and that the five persons chosen should be the delegates for the town—which motion the selectmen refused to put, as well as an appeal from the decision of the selectmen that the motion was irregular. A new ballot was called for, and at eight or nine o'clock it was declared that Mr. Parker was elected. This remonstrance was referred to the committee on elections and returns.

On a motion of Mr. RUSSELL of Boston, it was ordered that a messenger to the House should be appointed with authority to appoint such assistance as should be necessary. The President appointed Jacob Kuhn to this office.

Mr. WEBSTER moved that the Chaplains of the two houses of the Legislature be requested to officiate alternately as the Chaplains to the Convention. Before this motion was disposed of, an adjournment was called for, and after agreeing, on motion of Mr. PRINCE, that the hour of meeting daily should be ten o'clock in the morning until otherwise ordered, the House adjourned.

THURSDAY, NOVEMBER 16.

At 10 o'clock the President took the chair. The Hon. JOHN ADAMS was introduced by a committee appointed for the purpose, and conducted to the seat assigned him on the right of the President. As he entered, the members of the Convention rose and stood uncovered until he was seated.

The Convention attended prayers offered by the Rev. Dr. BALDWIN on invitation of the President, no Chaplain having been chosen.

Gen. PORTER of Hadley, Messrs. GREENLEAF of Quincy, ENDICOTT of Dedham, HOWARD of Bridgewater, and VALENTINE of Hopkinton were appointed Monitors of the Convention.

The order of the day, being Mr. WEBSTER's motion that the Chaplains of the two houses of the General Court should be requested to serve as Chaplains of the Convention, was called up.

Col. TURNER of Scituate moved as a substitute to the motion, that the several clergymen of different denominations in the town of Boston, should be requested to officiate alternately. This motion was declared to be out of order. Mr. Webster's motion was put and carried in the affirmative. For the motion 232.

Mr. SHAW, from the committee appointed to report rules and orders for the regulation of the Convention, made a report. The report, with the amendment subsequently adopted, was as follows :

## RULES AND ORDERS,

*To be observed in the Convention of Delegates for the Commonwealth of Massachusetts, met on Wednesday, the 15th of November, 1820.*

### CHAPTER I.

#### *Of the Duties and Powers of the President.*

SECT. 1. The President shall take the chair every day, precisely at the hour to which the Convention may have adjourned ; shall call the members to order, and on the appearance of a quorum, shall cause the journal of the preceding day to be read and proceed to business.

SECT. 2. He shall preserve decorum and order ; he may speak to points of order in preference to other members, and shall decide all questions of order subject to an appeal to the Convention, on motion of any member regularly seconded.

SECT. 3. He shall declare all votes ; but if any one member doubts the vote, the President shall order a return of the convention, with the numbers voting in the affirmative and in the negative, and shall declare the result.

SECT. 4. He shall rise to put a question or address the Convention, but may read sitting.

SECT. 5. In all cases, the President may vote.

SECT. 6. When the Convention shall determine to go into a committee of the whole, the President shall appoint the member who shall take the chair.

SECT. 7. When any member shall require a question to be determined by yeas and nays, the President shall take the sense of the Convention in that manner, provided that one fifth of the members present are in favor of it.

SECT. 8. He shall propound all questions, in the order they were moved, unless the subsequent motion shall be previous in its nature; except that in naming sums and fixing times, the largest sum and the longest time shall be first put.

SECT. 9. After a motion, being seconded, is stated or read by the President, it shall be deemed to be in possession of the Convention, and shall be disposed of by vote of the Convention; but the mover may withdraw it at any time before a decision or amendment.

SECT. 10. When a question is under debate, no motion shall be received but to adjourn,—to lay on the table,—for the previous question,—to postpone indefinitely,—to postpone to a day certain,—to commit, or—to amend; which several motions shall have precedence, in the order in which they stand arranged.

SECT. 11. The President shall consider a motion to adjourn as always in order, and it shall be decided without debate.

SECT. 12. He shall put the previous question in the following form, "shall the main question be now put," and all amendments or further debate of the main question shall be suspended, until the previous question be decided; and the previous question shall not be put, unless a majority of the members present are in favor of it.

SECT. 13. When two or more members happen to rise at once, the President shall name the member who is first to speak.

SECT. 14. All committees, except such as the Convention shall from time to time determine to select by ballot, shall be nominated by the President.

SECT. 15. The President shall have the general direction of the Hall of the Convention, and of the Galleries. No person excepting members, officers and attendants of the Convention and such persons as may be invited by the Convention, or by the President shall be admitted within the Hall. The chairman of each committee of the whole, during the sitting of such committee, shall have the like power of preserving order in the hall and in the galleries.

## CHAPTER II.

### *Of the Rights, Duties and Decorum of Members.*

SECT. 1. When any member is about to speak in debate or deliver any matter to the Convention, he shall rise and respectfully address the President; he shall confine himself to the question under debate, and avoid personality. He shall sit down as soon as he has done speaking.

SECT. 2. No member in debate shall mention a member then present by his name, but may describe him by the town he represents, the place he sits in, or such other designations as may be intelligible and respectful.

SECT. 3. No member speaking shall be interrupted by another, but by rising up to call to order, or to correct a mistake. But if any member in speaking or otherwise, transgress the rules of the Convention, the President shall, or any member may, call to order, in which case, the member so called to order, shall immediately sit down unless permitted to explain, and the Convention shall, if appealed to, decide on the case, but without debate; if there be no appeal, the decision of the chair shall be submitted to.

SECT. 4. No member shall speak more than twice to the same question, without first obtaining leave of the Convention, nor more than once, until all other members desiring to speak, shall have spoken.

SECT. 5. When any member shall make a motion, and such motion shall be seconded by another, the same shall be received and considered by the Convention, and not otherwise; and no member shall be permitted to lay a motion in writing on the table, until he has read the same in his place, and the same has been seconded.

SECT. 6. Every motion shall be reduced to writing if the President direct it, or at the request of any member of the Convention.

[Sec. 7, not accepted but recommitted.]

SECT. 8. No member shall be permitted to stand up to the interruption of another, whilst any member is speaking, or pass unnecessarily between the President and the person speaking.

SECT. 9. When a vote is declared by the President, and any member rises to doubt the vote, the Convention shall be returned and the vote made certain, without any further debate upon the question.

SECT. 10. Every member neglecting to give his attendance in Convention for

more than six days after the commencement of the session, shall be held to render the reason of such neglect; and in case the reason assigned shall be deemed sufficient, such member shall be entitled to receive pay for his travel, but not otherwise. No member shall be absent more than two days without leave of the Convention, and no leave of absence shall avail any member, who retains his seat more than five days from the time the same was obtained.

SECT. 11. All papers relative to any business before the Convention shall be left with the secretary, by any member who may obtain leave of absence, having such papers in his possession.

SECT. 12. When any member shall violate any of the rules and orders of the Convention, and the Convention shall have determined that he has so transgressed, he shall not be allowed to speak or vote, until he has made satisfaction, unless by way of excuse for the same.

SECT. 13. Every member who shall be in the Convention when a question is put, shall give his vote, unless the Convention, for special reasons, shall excuse him.

SECT. 14. On a previous question, no member shall speak more than once, without leave.

SECT. 15. A motion for commitment, until it is decided, shall preclude all amendment of the main question.

SECT. 16. All motions and reports may be committed or recommitted, at the pleasure of the Convention.

SECT. 17. The division of a question may be called for, where the sense will admit of it; but a question to strike out and insert shall be deemed indivisible.

SECT. 18. When the reading of a paper is called for, and the same is objected to by any member, it shall be determined by a vote of the Convention.

SECT. 19. The unfinished business, in which the Convention was engaged at the time of the last adjournment, shall have the preference in the orders of the day, and no motion or any other business shall be received without special leave of the Convention, until the former is disposed of.

SECT. 20. No standing rule or order of the Convention shall be rescinded or changed, without one day's notice being given of the motion therefor.

SECT. 21. When a vote is doubted, the members for or against the question, when called on by the President, shall rise and stand uncovered, until they are counted.

### CHAPTER III.

#### *Of the appointment and duties of Monitors.*

SECT. 1. One Monitor shall be appointed by the President for each division of the Convention, whose duty it shall be to see the due observance of the orders of the Convention, and on demand of the President, or of the chairman in committee of the whole, to return the number of votes and members in their respective divisions.

SECT. 2. If any member shall transgress any of the rules or orders of the Convention, and shall persist therein after being notified thereof by any Monitor, it shall be the duty of such Monitor to give information thereof to the Convention.

SECT. 3. In case the President shall be absent at the hour to which the Convention stands adjourned, the Secretary shall call the Convention to order, and shall preside until a President *pro tempore* shall be chosen, which shall be the first business of the Convention.

### CHAPTER IV.

#### *Of Communications, Committees, Reports, and Resolutions.*

SECT. 1. All memorials and other papers, addressed to the Convention, shall be presented by the President, or by a member in his place, and shall lie on the table, to be taken up in the order in which they were presented, unless the Convention shall otherwise direct.

SECT. 2. No committee shall sit, during the sitting of the Convention, without special leave.

SECT. 3. The rules of proceeding in Convention shall be observed in a committee of the whole, so far as they may be applicable, excepting the rule limiting the times of speaking; but no member shall speak twice to any question, until every member choosing to speak shall have spoken.

SECT. 4. Every motion or resolution, which proposes an alteration in the constitution, and all reports of Committees, appointed to consider the propriety and expediency of making any alteration therein, shall be discussed in committee of the whole, before they are debated and finally acted upon in Convention.

**SECT. 5.** Every resolution of the Convention, proposing any alteration in the constitution, shall be read on two several days, before it is finally acted upon and adopted by the Convention.

**SECT. 6.** In all elections by ballot, of committees of the Convention, the person having the highest number of votes shall act as chairman; and when the committee is nominated by the Chair, the person first named shall be chairman.

A rule in the original report, providing that in case the President should be absent at the time for calling the House to order, one of the monitors should call the House to order, and preside until a President pro-tempore should be chosen, was the subject of some debate. The rule was finally altered so as to make it the duty of the Secretary to preside in the case specified.

Mr. BLISS of Springfield moved to amend the rule providing for the case of reconsideration, in such manner that no vote of the House should be reconsidered, except on motion of a member who voted with the majority.

A member, whose name we did not learn, objected to the amendment, that it would preclude any one who was absent, or did not vote, from the right of moving a reconsideration.

Mr. WEBSTER said that it was proper it should operate in that manner; it was the duty of every member to be present. No one should be absent flattering himself that he might remedy any mischief that he conceived to be done in his absence, by moving a reconsideration of the subject.

Mr. DANA of Groton observed that we ought to guard against trammelling ourselves with too much regulation. He thought it improper that the right of moving for reconsideration should be confined to one who voted in the majority. We are in the habit of reviewing our proceedings, and an opportunity for reconsideration should be open. Besides, it might be unpleasant for a member in the minority, to be under the necessity of supplicating one in the majority, to make a motion for him.

Mr. QUINCY of Boston said, that from the very nature of a proposition for reconsideration it should come from the majority. It is a proposition to review, for the purpose of furnishing the opportunity for members to vote differently from what they had already voted. The motion therefore should come from one who wished this opportunity, and not from those who were satisfied with the vote they had given, and only wished to bring the majority to their opinion. He said, also, that it was improper that a member who has had the opportunity of urging his views and been overruled by the House, should have the power of renewing it under the shape of a reconsideration.

Mr. SLOCUMB of Dartmouth said that he was afraid we were pursuing a shadow and losing the substance. That by endeavoring to save time by limiting the right of reconsideration, we might be disabled from coming to the most mature results; that a minority of great talents because they were out-voted would be deprived of the opportunity of enlightening the majority and inducing them to change their opinion, unless some one would accommodate them by making the motion.

Mr. WEBSTER said he considered the rule to be of great importance; he wished every subject which came before the Convention to be thoroughly discussed, but he wished it to be done according to the rules of legislative bodies, which amply provided for mature deliberation, and guarded against surprise by requiring every act to pass through several readings at prescribed periods. Every member conversant with the proceedings of deliberative assemblies must have observed the inconvenience from the practice of frequently reconsidering votes which have been passed. No vote should pass without every member being ready to act upon it at the several stages.

Mr. SIBLEY of Sutton said he had another objection to the amendment of the member from Springfield; that it was impossible to tell who did vote in the majority, and that some mode therefore of ascertaining this should be inserted in the rule. He was however himself opposed to the whole amendment.

Mr. QUINCY said that if the question had been taken by yeas and nays, it would appear on the journals who voted in the majority, and in any case, the member moving for a reconsideration would show his right to make the motion by stating that he had so voted.

Mr. FOSTER of Littleton said he was not satisfied with the rule. He said we were debarred by it of privileges to which we had been accustomed. It had been urged that it would shorten debate, but he said that a minority might convince the majority and it was more important to come to a right decision than to save the time of the Convention.

Mr. PRINCE of Boston spoke against the amendment. He agreed that it was the duty of members to be present. But a member from one of the neighboring towns might go home on Saturday with the best intentions of returning on Monday, but be prevented by a storm or accident. He thought that in any such case they ought not to be precluded from the right of being heard.

Mr. MATROON of Amherst moved that this article should be re-committed to the committee who reported it.

Mr. DAWES of Boston opposed the recommitment, and expressed his hope that the motion to amend would prevail, for the reasons that had been stated, and for the additional one, that in all large bodies some members wanted to be speaking all the time, and it was necessary to have rules to restrain them. With respect to the difficulty of the gentleman from Sutton, that there was no mode of ascertaining who was in the majority, he said we might rely on the honor of any member of the Convention.

Mr. BLAKE of Boston was opposed to the recommitment because he was satisfied with the amendment proposed. He said that if ever there were an occasion for being governed by prescribed rules of proceeding to prevent debates from running to an unnecessary length, it is now, in so numerous an assembly, almost a council of five hundred. From the importance of the occasion every member would be disposed to be in his place.

Mr. MATTOON said that he did not move to recommit, because he was averse to the amendment; on the contrary, he approved of it; but he thought the recommitment would give an opportunity to gentlemen of considering the subject and satisfying themselves.

Mr. APTHORP of Boston spoke in favor of the recommitment.

Mr. MORTON of Dorchester was opposed to the recommitment and to the amendment. He said every member should have equal rights, and that he would rather prohibit all reconsideration, than that a delegate from one town should be allowed to call for it, while the right was denied to another.

Mr. AUSTIN of Boston was in favor of the amendment, but thought it necessary to recommit, for the purpose of rendering the rule more perfect in another respect. He replied to the argument of the gentleman who preceded him.

The question of recommitment was taken, and decided in the affirmative, 249 to 97.

Mr. JOHN PHILLIPS of Boston moved to amend by striking out the rule which prohibits any one in debate from speaking of a member who is present, by his name. He thought that in smaller bodies the rule was a good one; but in the present assembly containing so many members from a single town, it was in some instances impossible to designate an individual alluded to, in the mode required by the rule.

Mr. STORY of Salem said it was not consistent with the dignity of the assembly to depart from the usage of all deliberative bodies, and to permit individuals to be called by name in debate. He thought there would be no difficulty in adhering to the rule.

Mr. PICKMAN of Salem spoke against the amendment.

Mr. SIBLEY of Sutton was in favor of the amendment. He thought the rule unnecessary. Our rules would be known abroad, and he was averse to its going across the Atlantic that we are so uncivil, as to require being trammelled by such rules.

Mr. WEBSTER observed, that the best argument in favor of the rule was, that the reasons offered against it, are in contradiction to each other. It was objected to by the mover of the amendment, that it could not be enforced, and by the gentleman who last spoke, that it would enforce itself.

Mr. SIBLEY rose to explain. The motion to amend was withdrawn.

Mr. MORTON moved to amend the rule regulating the taking of yeas and nays. He moved to strike out the number "fifty," required for taking the yeas and nays, and to insert "one hundred." He said that much time was wasted in a call of the yeas and nays, and that fifty was too small a number of members to be entitled to make the call. His motion was adopted—226 in favor, and 137 against it.

Mr. QUINCY moved to strike out the rule for the purpose of introducing a substitute, the nature and object of which he explained. This motion was carried, 297 voting in favor. He proposed a rule,

which he modified on the suggestion of Mr. WELLES of Boston, requiring one fifth of the members present to support a call for the yeas and nays. This substitute was accepted.

The report as amended was accepted, with the exception of the rule recommitted.

Mr. TURNER moved that a committee be appointed to determine the compensation of the members of the Convention, and to make out a pay-roll. At the suggestion of Mr. SIBLEY, Mr. TURNER agreed to sever the motion. The first part was then voted, and a committee appointed, consisting of Messrs. TURNER, SIBLEY, RANTOUL of Beverly, DRAPER of Brookfield, and PRINCE of Newburyport.

Messrs. ELLIS of Dedham, STURGIS of Boston, and SHEPARD of Salem, were appointed a committee to draft a pay-roll.

Mr. DANA rose, and after observing that the House was now organized, and that it was necessary to proceed to the business for which the Convention was called, declared that he felt embarrassed in proposing any course of proceeding. He said that after forty years' experience of the beneficial effects of the constitution, the people had seen fit to choose delegates to make a revision of it. He had not had opportunities for judging of the sense of the people at large, but he knew that it was the opinion of those he had been with, particularly of his own constituents, that the constitution should be approached with great reverence, and that we should proceed with the greatest caution. He was much relieved from his apprehensions of any evil consequences, by the appearance of the assembly, composed as it was, of men of so much experience; of so many who had been called to administer the government in the legislative and judiciary departments.

He observed that a revision must be had; the constitution was made in the time of war and soon after the declaration of independence, and some changes were necessary. He doubted his ability to suggest the best course of proceeding.

He said that the constitution must either be re-drafted or the amendments be interwoven with it. For the purpose of enabling the Convention to shape their course of proceeding, and to draw forth abler men than himself he would submit the following proposition: That the part of the constitution relating to the Senate should be so amended that there should be thirty-one Senators chosen to act as Senators only, and apportioned in districts according to the number of inhabitants.

Mr. WEBSTER moved that the resolution be committed to a committee of the whole House and be made the order of the day for tomorrow.

Mr. RUSSELL of Boston was desirous that this subject should not be discussed until the committee for the arrangement of the seats had made their report, and that it should be made the order of a more distant day.



Mr. VARNUM of Dracut wished that a different plan might be pursued from that proposed by the gentleman from Groton. He said we were appointed to revise the constitution, and he thought it our duty to begin at the beginning of it and go through it in course.

Mr. PRESCOTT of Boston rose and said, that he had a motion to make when it should be in order, which he thought would meet the views of the gentleman from Dracut, though not precisely similar to the one he had suggested. He said he concurred with the gentleman from Groton that the constitution should be approached with reverence; that it should be touched with a trembling hand, and he believed that the Convention would proceed with the greatest caution. It had stood the test of forty years; we had grown up under it; it was interwoven with our habits and associations; our institutions were founded upon it; and no one could predict what would be the consequences of any innovations in it. The only safe rule for our direction, should be, experience. Whatever alteration experience had demonstrated to be necessary or beneficial, ought to be adopted, and no other. Wherever there is doubt whether an alteration will be beneficial, it is our duty to wait for further light from experience. We had just reason to feel a degree of pride that forty years ago, men and statesmen were found to frame, and the people had virtue and intelligence enough to adopt a better frame of government, than any on earth before that day. It had served, in some measure, as a model for all that have been formed since. How great would be the reproach, if, after the lapse of forty years, we should make alterations to impair the benefits derived from this constitution.

No change had been wished, no Convention had been thought of, until the formation of a new state from a part of the Commonwealth. The people were satisfied with the constitution, and did not wish to avail themselves of the opportunity of revision in 1795, when it might be done in conformity with the constitution itself. Discontent with the government had sometimes shown itself, but none with the constitution; and the revision now would not have been thought of, but from the supposed necessity in consequence of the separation of Maine from the Commonwealth.

He inferred this from what he knew of the opinions of the people, and from the small number of votes which were given on the proposition for a Convention. It may have been expedient to take the subject of amendment into consideration. We had lived securely and happily under the constitution, but changes take place in the condition of human affairs; defects creep into the best institutions.

He proceeded to consider in what manner the duty imposed upon the Convention could be best performed. He agreed with the gentleman from Dracut, that we were to revise the whole constitution, and to report to the people our opinion on the whole. He thought it would be necessary to submit the subject to a committee. A

committee of the whole, was too numerous to discuss it advantageously, and it was indispensable that it should go into the hands of a smaller number. Shall it then be submitted entire to one large committee, or in parts to several? There were objections to the first mode. A single committee could embrace but a small portion of the intelligence of the House; they would have too much to do; their attention would be distracted, and while they were preparing their report the principal part of the assembly would remain unoccupied. They would not be able to report upon a part so soon as a committee whose attention was confined to that part. He had thought with other gentlemen with whom he had conversed that it could be examined with greater despatch and clearness by apportioning it to several select committees. He said that no inconvenience could arise from this course, as a distinct subject could be referred to each committee. He would have the committees as large as could well act on the subject. We should thus have all the different parts revising at the same time. Some of the committees who would have much labor would report late, and others in a short time. With these views he had prepared some resolutions which he would submit. He then proceeded to read the following resolves, accompanied with remarks upon each:—

1. *Resolved*, That so much of the constitution of this Commonwealth as is contained in the first part or declaration of rights, be referred to a committee to take into consideration the propriety and expediency of making any, and if any, what alterations or amendments therein, and report as soon as may be.

2. *Resolved*, That so much of the constitution of this Commonwealth as is contained in the first section of the first chapter of the second part, and respects the General Court, be referred to a committee to take into consideration the propriety and expediency of making any, and if any, what alterations or amendments therein, and report thereon as soon as may be.

3. *Resolved*, That so much of the constitution of this Commonwealth as is contained in the second section of the first chapter of the second part, and respects the Senate; and also so much thereof as is contained in the third section of the same chapter, and respects the House of Representatives, be referred to a committee to take into consideration the propriety and expediency of making any, and if any, what alterations or amendments therein, and report thereon as soon as may be.

4. *Resolved*, That so much of the constitution of this Commonwealth as is contained in the first section of the second chapter of the second part, and respects the Governor, militia, &c. be referred to a committee to take into consideration the propriety and expediency of making any, and if any, what alterations or amendments therein, and report thereon as soon as may be.

5. *Resolved*, That so much of the constitution of this Commonwealth as is contained in the second section of the second chapter of the second part, and respects the Lieut. Governor; and also, so much thereof as is contained in the third section of the same chapter, and respects the Council and the manner of settling elections by the Legislature, be referred to a committee to take into consideration the propriety and expediency of making any, and if any, what alterations or amendments therein, and report thereon as soon as may be.

6. *Resolved*, That so much of the constitution of this Commonwealth as is contained in the fourth section of the second chapter of the second part, and respects the Secretary, Treasurer, Commissary, &c. be referred to a committee, to take into consideration the propriety and expediency of making any, and if any, what alterations or amendments therein, and report thereon as soon as may be.

7. *Resolved*, That so much of the constitution of this Commonwealth as is contained in the third chapter of the second part, and respects the Judiciary power, be referred to a committee to take into consideration the propriety and expediency of

making any, and if any, what alterations or amendments therein, and report thereon as soon as may be.

8. *Resolved*, That so much of the constitution of this Commonwealth as is contained in the fourth chapter of the second part, and respects delegates to Congress, be referred to a committee to take into consideration the propriety and expediency of making any, and if any, what alterations or amendments therein, and report thereon as soon as may be.

9. *Resolved*, That so much of the constitution of this Commonwealth as is contained in the fifth chapter of the second part, and respects the University at Cambridge, and the encouragement of literature, &c. be referred to a committee to take into consideration the propriety and expediency of making any, and if any, what alterations or amendments therein, and report thereon as soon as may be.

10. *Resolved*, That so much of the constitution of this Commonwealth as is contained in the sixth chapter of the second part, and respects oaths and subscriptions, &c., be referred to a committee, to take into consideration the propriety and expediency of making any, and if any, what alterations or amendments therein, and report thereon as soon as may be.

Upon reading each resolve he communicated the principal objects embraced by it, and proposed that the committee should be larger or smaller according to the importance and difficulty of the several subjects. He said that he would propose upon the bill of rights embraced by the first resolve a very large committee, to consist perhaps of twenty-one members. The part of the constitution relating to the Senate and House of Representatives, embraced in the third resolve, he would have committed to a committee equally large. This subject, he said, was of great importance, and one on which there might be a difference of opinion. The article relating to the Senate was generally considered to require amendment. As to the House of Representatives he did not know that any amendment would be expected. No doubt inconveniences were experienced from the large number of representatives, but he should be opposed to any alteration unless it could be made in a manner which would be generally satisfactory. The subjects embraced by the other resolves had fewer difficulties and might be referred to smaller committees.

He wished it to be distinctly understood, that he made these propositions because he thought it their duty to act upon the whole subject, not that he expected or desired any alterations on all the articles, or on any except such as are necessary.

Mr. DANA then said that as the subject had been examined, and fully reviewed by the distinguished gentleman who had brought forward these propositions, whose views he was happy to find as far as he could understand them nearly coincided with his own, withdrew his motion,

Mr. PRESCOTT then laid his resolutions on the table and they were read from the chair.

Mr. VARNUM moved that they should lie upon the table until tomorrow. He said he was afraid that if they took the constitution to pieces and dissected it in the manner proposed, they should not be able to put it together again. It was like sending mechanics into the woods in different directions to hew down trees and fit them there for a building. He thought that the whole should be considered together.

It was then ordered that the resolves lie on the table till tomorrow and be the order of the day, and be printed in the mean time for the use of the members.

Mr. DANA, of the committee for arranging the seats, reported that the members, except monitors, should draw lots in presence of the Secretary and the messenger. And that members should be at liberty to make exchanges within five days, giving notice to the Secretary.

On motion of Mr. WEBSTER, ordered, that the oldest member of the Boston delegation should give notice to the Chaplains, of the vote passed in relation to them, and request them to perform the duties of Chaplains of the Convention.

Mr. QUINCY, at the request of the proprietors of the Boston Athenæum, informed the members of the Convention that their library and rooms were open for their use whenever they should choose to visit them.

Adjourned.

#### FRIDAY, NOVEMBER 17.

The members of the Convention having drawn for places in the interval since the last adjournment, in pursuance of the order of yesterday, took the seats thus designated, this morning.

The committee appointed to inform the Chaplains of the two houses of the General Court of the vote yesterday in relation to them, having reported that they accepted the appointment as Chaplains of the Convention, and the House being called to order by the President, prayer was made by the Rev. Mr. JENKS, Chaplain of the House of Representatives.

The journal of yesterday's proceedings was read by the Secretary.

HON. JOHN ADAMS of Quincy rose, and observed that the Convention was yesterday informed that the Proprietors of the Boston Athenæum had tendered to the members of the Convention the use of their Library collections. He thought that such an instance of politeness deserved a return on the part of the Convention. He therefore moved that the thanks of the Convention be given to the Proprietors of the Athenæum for their liberal offer.

A vote of thanks was passed accordingly.

COL. TURNER, from the committee to whom was referred the subject of compensation of members, made a report, which report was laid on the table and read as follows:—

*Ordered.* That there be allowed and paid out of the Treasury of this Commonwealth to each member of the Convention, two dollars per day for each day's attendance on the Convention, and the like sum for every ten miles travel from their respective places of abode to the place of the sitting of the Convention.

*And be it further Ordered.* That there be paid to the President of the Convention two dollars per day for each and every day's attendance over and above his pay as a member.

The report was accepted.

The order of the day being called up,

Mr. SLOCUM of Dartmouth.—Mr. President, I feel myself very incompetent to lead the way in the discussion which is to take place on the subject of the resolves (proposed by Judge PRESCOTT,) which have now been read. When I look around me and see so many venerable men experienced in public affairs, some of whom have had a share in making our constitution, and many have taken a part in the administration of it, I feel the smallness of my abilities, but I deem it my duty to express my sentiments on the resolutions, confident that what is well intended will be favorably received. I thought the first question would be whether we should make any amendment in the constitution; but now we are taking this for granted, and parcelling it out in order to make them. We are leaping the stile before we get to it. I hope the report will not prevail; I do not know that my wishes will prevail, but I think it my duty to express them. I shall now sit down, and hear what other gentlemen have to say, and I shall be very happy to be convinced by their arguments; otherwise I shall remain opposed to these resolutions.

Mr. DANA of Groton said, that as no gentleman rose to present his views to the Convention, he would make a few observations. He said that the inquiry now presented, was whether the mode proposed was the best method of entering upon the business of the Convention. The old convention had no land-marks to direct them in the course which they were to pursue; but our labors were of a different kind. We had a constitution, which was believed by many to be perfect already. It was stated by the gentleman who moved the resolutions (Judge PRESCOTT), that the whole constitution was to be revised by us. This sentiment met with his entire and hearty approbation. He approved of the form in which the subject had been presented in these resolutions, because he presumed that different gentlemen had come with views to particular parts; and certain members would be better masters of particular parts than any could be of the whole entire. The several committees will have studied the parts referred to them, and when their reports come in, they would be more complete and satisfactory. There would besides be a large body of the members assembled, who could not be much employed, till the subjects had been matured in the committees. That mode which will employ the greatest number was the best. He had not examined whether the subject could be differently divided, but it was not material in what manner it was divided. The forms are such, that every member can be assured that his propositions will have full consideration; and he was on the whole well satisfied with the mode proposed. He was not able to conceive a mode better adapted than the one presented by the gentleman from Boston.

Mr. VARNUM of Dracut. I am very sorry, Mr. President, to be compelled to differ from the gentleman from Groton. Great formality has been used in taking the sense of the people of this Com-

monwealth, and a large majority have voted in favor of a revision of the constitution. The several towns have in consequence sent their delegates to look over the constitution, and see whether it requires any, and what amendments. The people have judged for themselves that the whole is to be revised; but now we are parcelling out the constitution, one part to one committee, and another to another, before we have determined that any amendment ought to be made. Now that we are assembled in Convention, it is our duty to inquire what we are to do, and what we may not do.

(The hon. gentleman then read the third section of the act providing for calling the Convention; which section, among other things, prescribes that the delegates elected, when organized, may take into consideration the propriety and expediency of making any, and if any, what alterations and amendments in the present Constitution of Government of the Commonwealth.)

He proceeded—We have met according to the act, in the State House in Boston. So far we have done right. What further then are we to do? We are to take into consideration whether the constitution requires any amendment. It appears to me that we are not to touch a finger to the sacred instrument, under which our institutions have grown up, under which we have so long enjoyed prosperity and happiness, until this question is decided. We are not to *begin* by parcelling it out in the manner proposed by these resolutions. In my opinion, our only proper way is to read the whole constitution, either in convention, or in a committee of the whole, and point out those parts which require amendment, proceeding article by article. The Convention is sent here to consider what will be for the public good, not only of this generation, but of thousands yet unborn. What are the objections to the mode which I am recommending? That it will waste time? Instead of consuming time, Mr. President, it will save time. Those parts which we pass over will stand firm, and those only which require amendment, will be left to occupy our attention; but if we send out committees, their reports will be discussed as much as the whole constitution; and will thus cause a great deal of time to be wasted. If these resolutions shall not be adopted, I shall move, that the Convention resolve itself into a committee of the whole, in order that it may take such a course as upon deliberation shall be deemed expedient. I shall vote against the present motion, in order to bring forward the proposition I have before suggested; and the subject now before the Convention, I esteem of such vital importance, that I shall call for the yeas and nays on the question when it shall be taken.

The motion was then put, whether the question when taken should be by yeas and nays, and carried—139 in favor—being more than one fifth of the members present.

Mr. BLAKE of Boston rose. Professing to have little acquaintance with the proceedings of legislative bodies, he had originally contemplated no course as most appropriate to this occasion. He was, however, yesterday much pleased with the mode proposed by

these resolutions ; and, on further reflection, he had been more and more satisfied that it was the best possible course that could be pursued. It was impossible to give a construction to the law by which we should not at some time or other examine every part of the venerable instrument. What was a more convenient time to proceed to examine it, and how could it be better done, than by taking it up in several parts. The gentleman from Dracut had observed that we had no liberty to put our finger upon a single article, until we had examined the whole instrument. He would ask, how it was possible to examine the whole constitution, without considering it in parts ?

Mr. VARNUM rose to explain. His idea was, that they had no right to parcel it out until the Convention had decided that the whole should be the subject of amendment.

Mr. BLAKE proceeded. How could the Convention determine whether the whole constitution should be subject to amendments, without first examining the parts of which it is composed ? The language of the constitution was simple, and easily comprehended by persons of moderate capacity. Still, it embraced a variety of important subjects, and they must be, at some time or other, examined in all their parts. Can this be done more satisfactorily, than by dividing the whole instrument among a number of respectable committees, leaving it to the whole Convention to judge and act upon their reports, and, afterwards, upon the whole constitution ? There was a great variety of opinions. Almost every individual had formed his particular project for amendment. Each one had his own ingredients to throw into the political cauldron, and it might be imagined what would be the mixture. He said it was their duty to bring into exercise the greatest portion of intellect which could be commanded in this body, and it was no compliment to say, that it would be of the highest character. This could not be done in any other manner, than by placing it in the hands of committees, judiciously selected. He did not think there was any force in the suggestion made yesterday, that this mode was calculated to produce a mass of disjointed materials. If we assembled to form a new constitution, there might be some aptness in the comparison of the gentleman (Gen. VARNUM) ; but God forbid that any of us should entertain an idea that we were to form a new constitution. We have the power to examine the instrument committed to us, to supply its defects. We have a fabric already erected ; there may be defects in it. He believed that such as there were arose rather from accidental circumstances, than from any inherent fault. He believed that the manner which the gentleman from Dracut had proposed, would be attended with great mischiefs ; and that that offered in the resolutions on the table, was the best that could be devised.

Mr. HUBBARD of Boston said, that as they were appointed to revise the whole constitution, he would move to amend the first resolution, so as to include the preamble, together with the Declaration of Rights.

The amendment was adopted.

Mr. WEBSTER observed, that the appointment of committees was no derogation from the powers of the Convention, nor a transfer of the trusts which the people had reposed in them, to others. It was certainly true, that the Convention itself was bound to inquire into the propriety and expediency of making alterations in the constitution. But *how* was it to inquire? It was a numerous, *deliberative* body; clearly resembling, in its organization, a numerous *legislative* body. It, therefore, had adopted its rules of proceeding, in general, from the practice of legislative bodies; and, among others, the common rules respecting the appointment of committees. He would ask, therefore, why it might not proceed in the important inquiries before it, as other such bodies are accustomed to proceed? It had been urged, by the honorable member from Dracut, that no committee ought to be appointed, on any part of the constitution, until the Convention had come to a conclusion that such part needed amendment. But why might not the Convention commence an inquiry into this very matter, — the *necessity of any alteration* — by a committee? It seemed to be treated in argument, as if it were a proposition to confide in others, the authority committed to our own hands. He did not look upon the proposition in that light. Committees are but instruments and organs of the body which appoints them. They are but means, which the body uses to aid it, in its inquiries and investigations. The constitution of this Commonwealth confers on the General Court, and on no other body, authority to lay taxes, establish judicatures, and pass laws. The General Court cannot transfer or delegate this power; and yet every one knows that in exercising it, the General Court uniformly acts through the agency of committees. What tax is laid, what judicature established, what law passed, without committees first appointed to inquire into the propriety and expediency of the proposed measure in every case? He thought it a mere question of expediency and fitness, whether the Convention should proceed in its inquiries, in the first place, by committees, or in another course. He was favorable to the appointment of committees; among other reasons, because he thought that mode would give greater security against ill-considered and hasty propositions of change. We might, it was true, go into committee of the whole upon the constitution, in the first instance, and go through it, paragraph by paragraph; but he thought it better to follow the usual forms, and to inquire by committees in the first instance. Everybody knew, of course, that on the report of any committee being made, any member might oppose it, or propose to amend it, or to recommit it; or, he might bring forward himself any amendment to the constitution which the committee had not brought forward. No member would be precluded from an opportunity of submitting any proposition to the Convention. At the same time, it might be confidently hoped, that the reports of respectable committees might contain useful suggestions and reasons on the subjects reported on



by them, and might produce an effect on the judgment and discretion of members, with respect to the propriety of proposing alterations. It was in this way, as he thought, that the proceeding by way of committees, while it left an entire liberty to every member, to bring forward his propositions, might yet have some tendency to produce a salutary caution in regard to the propriety of submitting such propositions. This course seemed to him, on the whole, to be expedient, and he thought it quite clear, at least, that from the duty imposed upon the Convention by the law, there was no *impropriety* in their adopting it, if they judged it the most suitable manner of commencing their important inquiries.

The question was then taken by yeas and nays, on the adoption of the first resolution, and carried in the affirmative. Yeas 377, nays 90.

It was then moved that the question be taken on the rest of the resolutions together. Agreed to.

The question on the acceptance of the other nine resolutions was then taken, and decided in the affirmative, without a division.

On successive motions, it was ordered that the committee, to whom should be referred the part of the constitution embraced in the first resolution, should consist of twenty-one members. The committee under the 2d resolution, of fifteen members; the 3d, of twenty-nine; the 4th, of fifteen; the 5th, of twenty-one; the 6th, of fifteen; the 7th, of fifteen; the 8th, of five; the 9th, of twenty-one; and the tenth, of twenty-one.

Mr. CHILDS of Pittsfield said he hoped it would not be indelicate, or be thought to show any want of respect to the chair, if he should move that the committee on the first resolution should be chosen by ballot. He had no doubt that the President would act with the strictest impartiality, but he thought it would be impossible for any single man to have such a knowledge of all the members as to be able to appoint a committee on this important subject which should represent the interests and feelings of all the different parts of the Commonwealth.

Mr. WEBSTER spoke on the impracticability of the measure proposed. He said it would be a great waste of time to choose all the committees, one consisting of twenty-one, another of twenty-nine members; and the others of a large number of members. All the ballots that would be necessary, could not be gone through with in a week. To state the proposition, was enough to show it to be impracticable. It was stated by the mover that the presiding officer could not have the requisite information. But his proposition rendered it necessary that every member should have the requisite information. When they were nominated from the chair, the House would act upon each one, and either confirm or reject it. The appointments would be entirely within the power of the House. This would be a sufficient check, if any were necessary, upon the presiding officer, acting as he would under the responsibility belonging to his station.

JUDGE STORY of Salem said that the explanation which had just been given by the gentleman from Boston, showed very forcibly that there could be no advantage in choosing the committee in the mode proposed in the motion. The inconvenience of this mode had been strongly pointed out. Yet if he had any apprehensions that the interests, feelings, and opinions of every member would not be as fairly represented, by the usual mode of nomination, he would be willing to go through the labor of balloting for a whole week, if it were necessary. But for himself he had not the means of knowing what gentlemen were best qualified to serve on these committees. Perhaps nineteen in twenty, of those who ought to be appointed, were wholly unknown to him. Many of them he had never seen, and probably he was in this respect in the same situation with ninety-nine out of a hundred in the Convention. The propriety of appointing one man depended on the question who was to be his associate. It would be necessary to select persons from different parts of the State, and persons in different situations, and supposed to entertain different opinions on the subjects referred to their consideration. Each member would vote, without knowing who would be voted for by others, and must act according to his own opinion, which of course could not be expected to prevail with respect to all. He thought that besides the inconveniences with which this method would be attended, it was calculated to produce the very evil the mover proposed to guard against. But, said he, when I consider the character of the gentleman from whom, by the rules of the House, the nomination will proceed, his station in the Commonwealth, his station here, with all the responsibility that belongs to it, we have a pledge which it is impossible should ever be violated, that no private motive should mingle with considerations of duty in the selection of the committee. The eyes of every member of the Convention are upon him, and it would be impossible, if he were disposed, and that is not for a moment to be imagined, to swerve from the line of strict impartiality. In the character of the *presiding* officer, we have a pledge that the feelings and interests of all will be consulted. He will make the most careful examination, and act upon the best information which gentlemen can give him. Even if it be possible, that from inadvertence or any other cause, there should be any improper nomination, the check belonging to this body is not to be forgotten. It is complete in all its parts. We can negative any nomination, or can add to the committee if it is not satisfactory to the House. We are not bound to accept, and can make any amendments to the reports which they shall make. The Convention is composed of so much talent and character, that it is impossible to smuggle anything through the House. Every report must be deliberated upon and adopted only upon conviction of its propriety. He had these reasons for thinking that the gentleman's proposition was calculated to defeat the object he had in view. In the nomination, different men should be selected for different objects. Some members had great experience in certain parts of the

duty which would be required, and none in others. It was not in his power—perhaps it was in the power of few individuals in the House—to judge who were qualified to serve most acceptably on the different committees.

The motion was decided in the negative, without a division ; few members voting in favor of it.

The President said that he should require a little delay, and that he would make the nomination tomorrow morning.

Mr. FISHER of Westborough moved that when the House adjourned, it should adjourn to nine o'clock in the morning instead of the hour now fixed.

Mr. DEARBORN of Roxbury said he thought that ten o'clock would be most convenient to the generality of the members, and particularly to such as lived in some of the neighboring towns. Another member observed that committees would want time in the morning, and that ten o'clock was quite early enough. The question was then taken for altering the hour to nine o'clock, and was determined in the negative, 271 to 127.

Mr. BEACH of Gloucester moved for a reconsideration of the vote establishing the compensation of the members at two dollars per day, for the purpose of fixing it at one dollar per day.

Mr. DANA moved that this subject be assigned for tomorrow at 11 o'clock. Negatived. Mr. Beach's motion was then put and negatived, the mover and one other member voting in the affirmative. The House then adjourned.

#### SATURDAY, NOVEMBER 18.

The Convention being called to order, the journal of yesterday was read.

The President then informed the House that he was ready to nominate the several committees on the Resolutions passed yesterday. The nominations were confirmed by a single vote upon each committee.

The following gentlemen compose the several committees, viz.\*

1st RESOLVE—Messrs. Bliss of Springfield; Varnum of Dracut; Baldwin of Boston; Heard of Ipswich; Wingate of Haverhill; Hoar of Concord; Sibley of Sutton; Estabrook of Athol; Hinckley of Northampton; Blake of Boston; Fowler of Westfield; Mason of Northfield; Childs of Pittsfield; Woodbridge of Stockbridge; Storrs of Braintree; Endicott of Dedham; Allyne of Duxbury; Turner of Scituate; Morton of Freetown; Leach of Easton; Freeman of Sandwich.

2d RESOLVE—Messrs. Dana of Groton; Starkweather of Worthington; Keyes of Concord; Fiske of Weston; Willard of Fitchburg; S. Porter of Hadley; Hoyt of Deerfield; Trask of Brimfield; Hazard of Hancock; Whitton of Lee; Greenleaf of Quincy; Weston of Middleborough; Godfrey of Taunton; Cobb of Brewster; Hussey of Nantucket.

3d RESOLVE—Messrs. Prescott of Boston; L. Lincoln of Worcester; Saltonstall of Salem; Pearce of Gloucester; Lawrence of Groton; D. Webster of Boston; Knowles of Charlestown; Russell of Mendon; Lyman of Northampton; Story of

\* (These committees were somewhat modified at the session of the 20th.)

Salem; Smith of Hatfield; Freeman of Boston; Alvord of Greenfield; Dwight of Springfield; Hyde of Lenox; Stowell of Peru; Dearborn of Roxbury; Sullivan of Brookline; Hedge of Plymouth; Spooner of Fairhaven; Hodges of Taunton; Reed of Yarmouth; Sullivan of Boston; Rantoul of Beverly; Blood of Sterling; Locke of Billerica; Foote of Southwick; Nye of Sandwich; Newell of Attleborough.

4th RESOLVE—Messrs. Varnum of Dracut; Mattoon of Amherst; Sullivan of Boston; Dearborn of Roxbury; Bartlett of Haverhill; Pickman of Salem; Spurr of Charlton; Willis of Pittsfield; Fay of Cambridge; Howard of Bridgewater; Russell of Boston; Fearing of Hingham; Doane of Yarmouth; Lincoln of Taunton; Abbott of Westford.

5th RESOLVE—Messrs. Pickman of Salem; Apthorp of Boston; S. A. Welles of Boston; Bartlett of Newburyport; White of Salem; Whitman of West Cambridge; Flint of Reading; Taft of Uxbridge; Bangs of Worcester; Lawrence of Leominster; Hale of Westhampton; Hunt of Northampton; Hamilton of Palmer; Smith of Sunderland; Hill of West Stockbridge; Ellis of Dedham; Richardson of Hingham; N. M. Davis of Plymouth; Mitchell of Bridgewater; J. A. Parker of New Bedford; Crocker of Barnstable.

6th RESOLVE—Messrs. Ward of Boston; Bannister of Newburyport; Parrot of Gloucester; Wade of Ipswich; Josiah Little of Newbury; Sanger of Sherburne; Fisher of Lancaster; Thurbur of Mendon; Dickenson of Belchertown; Morris of Springfield; Bassett of Ashfield; Dewey of Sheffield; Draper of Roxbury; Russell of New Bedford; Draper of Brookfield.

7th RESOLVE—Messrs. Story of Salem; J. Phillips of Boston; Morton of Dorchester; Cummings of Salem; L. Lincoln of Worcester; Andrews of Newburyport; Holmes of Rochester; Willis of Pittsfield; Austin of Charlestown; Leland of Roxbury; Kent of West Springfield; Shaw of Boston; Marston of Barnstable; Austin of Boston; Bartlett of Medford.

8th RESOLVE—Messrs. Welles of Boston; Nichols of South Reading; Gardner of Dorchester; Picket of Otis; Dean of Taunton.

9th RESOLVE—Messrs. Quincy of Boston; Fay of Cambridge; Saunders of Medfield; Austin of Charlestown; Kendall of Leominster; Tuckerman of Chelsea; Bailey of Pelham; Thomas of Plymouth; Hubbard of Middleton; Sullivan of Brookline; Ware of Boston; Boylston of Princeton; Smith of Milton; Saunderson of Whately; Hooper of Marblehead; Savage of Boston; Locke of Ashby; Freeman of Sandwich; Noyes of Newburyport; Stebbins of Granville; Adams of Framingham.

10th RESOLVE—Messrs. D. Webster and Prince of Boston; Williams of Beverly; Foster of Littleton; Parker of Charlestown; Seaver of Roxbury; A. Lincoln of Worcester; Leonard of Sturbridge; Sampson of Harvard; King of Salem; Parris of Marblehead; Shepley of Fitchburg; Hubbard of Boston; Fiske of Weston; Dean of Boston; Hull of Sandisfield; Baylies of Wellington; Jethro Mitchell of Nantucket; Mack of Middlefield; S. A. Welles of Boston; Walker of Templeton.

Mr. DANA of Groton moved that the Secretary be ordered to furnish each of the members of the Convention daily during the session with two newspapers such as each member should choose. He observed that it was usual for members of deliberative bodies to be furnished with newspapers. In the present instance it would tend not only to their own instruction and gratification, but would enable them to furnish their constituents at a distance with a full account of their proceedings here, by transmitting the journals of the day which contained a regular report of their doings. He concluded by offering a resolution.

Mr. AUSTIN of Boston hoped that if the resolution was adopted there would be an addition made to it, requiring that they should be read out of the House and not by members in their seats. He said it had been a pleasant sight to observe the members of the

House attentively engaged in the business for which they were convened. He should be extremely sorry to see the example which had been set departed from by the introduction of the daily journals. He said that the members had not the power of franking to enable them to send papers to a distance free of expense, and instead of being of any benefit to their constituents, that they would remain as waste paper on the table of the members.

Mr. DANA replied, that the gentleman from Boston, living in the capital and always near the sources of information, might have a different feeling from those who had come there from remote parts of the State. He thought it would be a great convenience to be furnished with this means of informing their constituents of their course of proceedings here. On the ground of its interference with the duties of the House, he thought that no rule would be necessary to govern the conduct of members. A sense of decorum would be a sufficient restraint. It would be a convenience to be furnished the means which the papers afford of reviewing every morning the doings of the preceding day. The expense would be small and he would suggest that the papers should be delivered to the members at their respective lodgings.

Mr. PICKMAN of Salem was opposed to the resolution because each member might supply himself at a trifling expense, and he thought it unnecessary that the House should take any order on the subject.

Mr. BLISS of Springfield said he hoped the motion would prevail with an amendment, that the members should be furnished with but one paper daily instead of two, and that the motion should extend only to newspapers printed in Boston. He said that it would be convenient for the members to refer to the papers for the proceedings of the House—to know who were on committees, &c. That he thought this a sufficient ground for the motion, and that no other reason would justify their incurring this public expense.

Mr. DANA consented to the amendment proposed by the gentleman from Springfield.

Mr. HORT of Deerfield proposed that the order should relate back to the beginning of the session.

Mr. TILLINGHAST of Wrentham said he had no objection to the proposition of the gentleman who spoke last, if it could be carried into effect; but he was apprehensive that the printers would not have newspapers on hand of the past days of the session sufficient to furnish the members.

Mr. DWIGHT of Springfield moved that the subject in debate be assigned for Monday at 11 o'clock.

Mr. SALTONSTALL of Salem hoped that it would not be assigned, and that the motion of the gentleman from Groton would not pass in any shape. He said the members had better be attending to what was going on before them in the House. That every one who had frequented the two houses of our Legislature must have witnessed the inconveniences arising from newspapers being furnished to the

members. It was an unpleasant sight he observed, to see legislators reading advertisements and the news of the day, to the neglect of the duties they were chosen to perform. He said it would look odd to make a rule to prohibit members from reading newspapers. He thought the members might furnish themselves with papers if they wanted them, and he hoped the motion would not prevail.

Mr. JOHN WELLES of Boston was sorry to differ from the gentleman from Salem. He thought that members would not be disposed to violate the rules of propriety. He said it was of great importance that the proceedings of the Convention should be published, to enable the members to give information to their constituents; which he thought could not be done in a better or more easy mode.

Mr. BOND of Boston moved that the subject be committed, in order that the committee might consider the expediency of substituting for newspapers the volume which he understood was preparing, containing the proceedings of the Convention. He observed that most of our towns had Social Libraries in which the book might be usefully deposited, for the convenience of every man, who would not otherwise have the means of information.

Mr. KNEELAND of Andover hoped the motion to furnish newspapers would not prevail. He said the members might read them at their lodgings, without any expense.

Mr. APTHORP of Boston thought it would be proper that the members should be furnished with the papers for their own information.

Mr. WEBSTER said that it was a standing rule of all the legislative bodies that he had any acquaintance with, that no member should be employed in reading in his place either newspapers or any printed paper except the printed journal of the house or some other paper printed by order of the house, and he should consider it the duty of any one who saw this rule infringed, to call to order the member who violated it.

Mr. DANA was opposed to the commitment and to a postponement, for reasons which he stated. The motion to commit was put and decided in the negative.

Mr. QUINCY of Boston said he thought that it was an act of comity due from gentlemen residing here who were already provided with the daily papers, to furnish others with the same privilege. He was in favor of the resolution. The question was taken and decided in the affirmative by a large majority.

Mr. SHAW of Boston, from the committee to whom was committed the rule of the House on the subject of reconsideration of questions, reported as a substitute for the article in the original report, the following rule :

No motion for the reconsideration of any vote shall be sustained, unless made on the day on which such vote passes and a return of the Convention be then made and entered on the journal, when the question was not taken by yeas and nays; every such motion shall lie on the table one day before it shall be taken up for consideration, and shall not be taken up, unless as many members are present in convention as were present when such vote passed; and not more than one motion for the reconsideration of any one question, shall be sustained.

Mr. DANA moved to strike out the clause that required the same number of members to be present when the motion for reconsideration was sustained as were present on passing the original vote. He thought there should be some regulation on the subject of reconsideration, but this was too strict. He said that if gentlemen would recur to the journal of the convention that framed the constitution of the United States, an assembly composed of members of great experience and intelligence, they would find that in the course of their proceedings, propositions were adopted and rejected, reinstated and again rejected, and that they exercised the right of reconsideration with the greatest freedom. If such men required such an indulgence, we should not be able to dispense with it. He thought the rest of the rule would furnish a sufficient guard against abuse, without a second return of the House to know if as many members were present as there were on passing the measure proposed to be reconsidered.

Mr. SIBLEY of Sutton thought it would be impossible ever to reconsider a motion if this rule prevailed. The House was now very numerous—gentlemen would be from inevitable accidents called home, and the members of the House regularly decreasing. It would also be in the power of persons opposed to reconsideration to keep out of the House, and in that way to gain their object. He thought that notice only was necessary, and that the amendment should prevail.

Mr. APTHORP of Boston liked the order as it was reported. He thought the objection arose from not adverting to the nature of a reconsideration, which was a motion to do away what had been already done. It was reasonable that when anything had been done by any number of members, an equal number should be required to do it away.

Mr. SHAW hoped that the amendment proposed by the gentleman from Groton, would not prevail, because it would wholly alter the character and operation of the rule. He was desirous of explaining, shortly, the course of reasoning which had induced the committee to recommend the rule, as it was reported. They had not submitted this rule, because they thought it to be absolutely the best and most conformable to sound principles, but because it had long been in operation in the most numerous legislative body in this Commonwealth; therefore they considered it one, with the use and practice of which most of the members of this Convention were from experience familiarly conversant. Had they been required now for the first time, to propose a rule on this subject, they would probably have preferred the substitute, offered by the gentleman from Springfield, when this subject was before the Convention upon a former occasion, limiting the right of moving for the consideration of any vote, to a member who had voted with the majority upon the question proposed to be reconsidered, and which was understood to be conformable to the practice in the House of Representatives of the United States. But considering that some advantages in practice

would be derived from adhering to the rules which have for many years prevailed in this Commonwealth, the committee in the first instance had adopted in terms, that of the House of Representatives of our own State in preference to a new one, not so well known.

But it having appeared from the short debate on the subject, which took place when this subject was before under discussion, that the proposed rule was ambiguous in its terms, that different presiding officers had put different constructions upon it, and that gentlemen of the longest experience in the Legislature differed in their views of its true import, and as the subject had been recommitted for the purpose of further reconsideration and amendment, the committee had now reported the same rule in substance, but expressed in terms which in their apprehension would divest it of all ambiguity and make its import at least clear and intelligible. He proceeded to state that the rule itself was founded on the great and incontrovertible principle that in all deliberative assemblies of persons possessing equal rights, the voice of a majority, solemnly and deliberately expressed, must control that of a minority. If the same number who have carried a measure, or a larger number, is desirous of revising their decision, whilst their acts are yet in their power, in consequence of having received new information or changed their views, they have an unquestionable right so to do; but it has never yet been the practice of the Legislature of this Commonwealth, to permit a smaller number to reverse the acts and votes of a larger. The clause therefore, which the gentleman proposes to strike out, is designed to secure the operation of these principles, to guard against surprise, and to secure to the Convention the means of ascertaining in each particular case, that the body called upon to reconsider, is at least as numerous, as that which has deliberately adopted the measure, or passed the vote in question. Mr. S. said this amendment had been urged, on the ground that the rule as reported, had a tendency to narrow the range of discussion; this, however, he believed was a misrepresentation of the design and operation of the rule. Its tendency was rather to encourage a free discussion of every important question at the most proper time, before a vote was taken. Besides, take the rules together, as they have already been adopted, and ample provision is made for the most full and unlimited discussion of every question, which any gentleman may think proper to bring under the consideration of the Convention. Every important question would first be considered in committee of the whole, when the most liberal discussion would be had and the sense of the whole body fully expressed, and again the measure, whatever it might be, would be deliberately revised in Convention. Should their deliberations result in a resolution proposing alteration in the constitution, such resolution must be read on two several days, at each of which readings, the whole subject would be open to debate; by using the term reconsideration therefore, in its liberal and proper sense, every important question must, in the regular and orderly course of proceeding which the Convention had



prescribed to itself, be solemnly and deliberately *reconsidered*. Nothing, therefore, could be more groundless than the apprehension that this House would be deprived of the means of considering again every question that any member might think proper to submit.

It had been suggested as one reason, why the rule as it stands would be impracticable, that the ranks of this body would shortly be thinned by the absence of members; he trusted, however, that whatever might be the case in ordinary legislative assemblies, no consideration short of imperious necessity would induce a gentleman to withdraw the aid of his voice and counsel from this convention until the very interesting and important trust confided to them by their constituents had been fully and definitively discharged. Believing that the clause in question was an essential part of the rule, that the rule itself, thus guarded, would promote the orderly course of proceedings, and prevent surprise, he hoped it would not be stricken out.

MR. HOLMES of Rochester thought the argument of the gentleman from Sutton, was irrefutable. He acknowledged that he felt the weight of the observations of the gentleman from Boston, last up, but he thought that the order might be so amended as to meet the views of both gentlemen—by merely requiring that there should be as large a number to vote for reconsideration as voted in the majority on the original question.

MR. VARNUM observed, that the remarks of the gentleman from Sutton, were conclusive, and he called upon gentlemen to produce a single instance of a rule similar to the one reported, in any legislative assembly. He said it was an absurd rule, and what would be the consequences of it, he asked? Suppose all the members of the Convention to be present, a vote passes by a majority of a single member; we are not assured of the health of the members—we must expect accidents—it is probable that there will be a progressive decrease in the number of members who will attend—if one member is called away, you cannot reconsider, because there will not be as many present as there were when the original question was taken. Many votes pass upon the spur of the occasion—perfection does not belong to men, and it always has been and will be the case, that members may change their minds; but if this rule passes, there will be no remedy. Suppose an endeared friend should die—suppose a man should fall dead in the street—these would surely be reasonable causes for absence. Can the Convention supply vacancies?—the law makes no provision for this. Suppose a measure passed which is a favorite with any single member—if he has not honor enough to come into the House, he has it in his power to defeat all reconsideration. The gentleman said the rule was an improper one, and an arbitrary one. He said that if notice were given of a member's intention to move a reconsideration, and this notice lay on the table one day, it was sufficient. That nothing but imperious necessity could justify the absence of any member of that body.

Mr. S. A. WELLES of Boston observed, that this was the most salutary rule which had been reported by the committee. He said it would prevent any measure which had been adopted by a majority, from being reversed by a minority—that its influence would be particularly felt by the members from the country. It may happen that many members may have retired to their homes, feeling secure that what has been transacted in the House, with their approbation, would stand firm; but if this rule is rejected, they will feel no security. The measure may be reversed, before they can return. He apprehended that the gentleman from Dracut was mistaken in respect to the antiquity of this rule; that if he would take the trouble to look over the proceedings of our old house of assembly, he would find a similar regulation, in a letter from the assembly, in 1768, to Lord Hillsborough. He thought this rule would be found to be a wise rule, and one from which no inconvenience would be experienced, and he therefore hoped it would be adopted.

Mr. LELAND of Roxbury said that other instances besides those mentioned by the gentleman who preceded him, might be cited, where similar rules had prevailed. The committee had taken into the article the very principle that prevailed in the house of representatives of this Commonwealth, to confirm which, he read the rule, and affirmed that it required the same number should be present when the vote for reconsideration was taken, as were present on the main question. There was a little ambiguity, which the committee had removed in their report. He thought the rule reasonable. There should be a period when debate should come to an end. He said he would not reurge the reasons of the gentleman from Boston, but thought he was not heard in all parts of the House. He recapitulated the course of proceedings in the House—first, consideration in the committee—second, the same proposition as discussed in the House—members may speak twice as a matter of right, and oftener by obtaining leave—the question is taken on two separate days—on each reading, any member may go over the argument again on the same question. He supported the rule more at large, and opposed striking out.

Mr. WILLARD of Fitchburg was in favor of the amendment of the member from Groton. He said sufficient notice of a motion to reconsider, would always be given to those who were opposed to a reconsideration. The gentleman from Boston, (Mr. S. A. WELLES,) had expressed great solicitude for the country members, lest advantage should be taken of their absence. He was from the country, he said, and for himself he felt no such apprehension.

Mr. MARTIN of Marblehead thought members were making the subject in discussion of more importance than it deserved. He said they had been appointing numerous committees to consider of the expediency of different parts of the constitution. He would suppose that some amendments were adopted—that they were very excellent amendments—still, he said, the votes by which they were adopted, would not be beyond the power of the House, if the rule

reported should be accepted. That some member would only have to move that the rules of the House be dispensed with, and the votes would be open to reconsideration. He said he should vote to strike out.

Mr. MORRON thought that the part comprehended in the motion of the gentleman from Groton, was an objectionable feature in the rule reported by the committee, and he hoped the motion to strike it out would prevail. Every member, he said, had equal rights, and no rule should be adopted which would give one member greater rights and privileges than another. If a member, in proper time, moves for a reconsideration, and takes care to have as many members present as there were when the original vote was passed, he does all that can reasonably be required of him. He stands *rectus in curia*. He has a right to say, I have made my motion regularly and fairly, and am entitled to have it considered—who, he asked, has power to make any rule to prevent its being considered? If any member should be absent by accident, this rule, he said, would deprive him of all power of remedying, what should appear to him to be an inconsiderate measure. He said there was no precedent to sanction this rule.

Mr. WEBSTER observed, that as there was much opposition to the motion, and as it was not of great importance to act upon it immediately, he would venture to propose to have it laid on the table.

Mr. DANA spoke in favor of laying the report on the table.

Mr. FOSTER was opposed to laying the report on the table, because, if there was no rule, there could be no reconsideration. He thought that if the rule was not adopted, the other rules could not be printed. He wished that the rule might be settled, and that all the rules might be printed.

Mr. BOND said he differed from his honorable colleague, (Mr. WEBSTER,) and was opposed to the report's being laid on the table. The same difficulties and discussion, he said, would recur when the subject came up again. He thought that the opposition to the rule as reported, arose from mistaking the meaning of the rule, and from supposing, what would not prove to be true, that it would be impossible to obtain a reconsideration of any question under it. He said that the objection, that all the delegates present at a vote, would not be present when the motion to reconsider was agitated, was more specious than solid. The rule, he said, did not require the *whole* number, that is, the same persons, who voted, to be present at the motion to reconsider, but only as many as voted. The rule of the house of representatives, he apprehended, had been generally construed as this one is expressed. He hoped that the rule as reported, would be adopted.

Mr. SAVAGE of Boston thought that very many members felt great relief upon the motion being made by his colleague, to lay the report on the table. He thought that sufficient provision was made in the other rules to guard against surprise. The only objection to omitting the rule, he thought, was, that when a motion was

made for reconsideration, it might be objected that the motion was out of order. He thought that no difficulty would arise of this kind, for if the House perceived the reason for reconsideration, they would readily accede to the motion. If there was no rule, there would be no prohibition of reconsideration.

Mr. SLOCUM followed, but we were not fortunate enough to hear his remarks.

Mr. HUBBARD of Boston said if he understood the remarks of the gentleman from Boston, he thought it was not necessary we should have any rule on the subject in discussion. He (Mr. HUBBARD) thought there were many occasions, on which it was proper for the House to have a reconsideration. He thought that the House ought to have this right—but that they should qualify this right, and it was his opinion that the rule proposed, regulated it in a proper and convenient mode. He was opposed to having the report lie on the table. He thought the present time as good as any to determine on the question. There was nothing else of consequence to occupy the Convention now, as the important business for which they were assembled, had been portioned out to committees. He therefore wished that the subject might not be deferred.

Mr. WEBSTER withdrew the motion to lay the report on the table.

Mr. BALDWIN of Boston thought that the report could be so amended as to remove the objections which had been made to it. He suggested a modification of it, but did not make any motion to amend.

Mr. DANA was pleased with the disposition shown by members not to protract debate unreasonably. But he thought there was one operation of this rule which had escaped the observation of the committee. He argued that the Convention, being formed of a single body, wanted the checks which were furnished in most legislative bodies, by being composed of two houses, and subject to the negative of the executive authority, and consequently required more ample provision for securing the right of repeated deliberation. He examined in detail, what must be the operation of the rule, and contended that contingencies, which he stated, might render the rule extremely injurious in its operation. He replied to the suggestion that the rule would secure the attendance of members. He thought that no additional inducements were necessary to secure attendance when it was possible, but there would be cases in which it would be impossible. A vote might pass in a full house, by a single vote. Members might change their opinions, yet it would be in the power of a single member, by retiring, to prevent the reconsideration of a favorite measure. It would put it in the power of a single member to oppose the will of the whole House. He thought that the Convention would not agree to a rule which might have so injurious an operation.

Mr. BLISS thought the striking out the part proposed would render the rule absurd. He was desirous, he said, to save time as much as possible, and was in hopes that the Convention might soon have

two sessions a day. But this rule so altered would lead to a needless expense of time. There was nothing in it to prevent a reconsideration on the same day that the vote is passed, and as many reconsiderations as any member should move for. He said that without that part, it did not go to the object of the rule. It ought to require that notice of the motion to reconsider should be given at the time the vote passes; otherwise the clause requiring a return of the House should be struck out as superfluous. He was satisfied he said with the rule as amended by the committee. It had obviated the objection he made to the one originally reported; though he thought the substitute proposed by himself on a preceding day, would have answered equally well. He said that as he was not much conversant with the modes of proceeding in our legislative bodies, he did not know the practical effect of the rule as it at first stood. That now the ambiguity was removed, and he was satisfied; and he thought that substantial reasons had been urged against the alteration proposed.

Mr. PICKMAN said that if the amendment was adopted, a further amendment would be rendered indispensable. Without it, it would be put in the power of a member of a minority, on a vote passed by a large majority in a full house, to give notice of a motion for reconsideration, and to call it up at any subsequent time in a thin house, and to carry it in opposition to the sense of a large majority of the house.

Mr. WELLES read a passage from the Massachusetts State papers, proving the existence of the rule he had alluded to, in the Massachusetts Provincial Assembly, in the year 1768, by which no question for reconsideration should be put, unless when there were as many members present, as when the original question was taken.

Mr. VARNUM said that when he spoke of the rule reported by the committee as being different from any that had prevailed in any other legislative body, he referred to the legislatures of the several United States, and he did not suppose that any gentleman in looking for an authority on this occasion would search the records of a British colony.

The question for striking out on Mr. Dana's motion, was taken and decided in the affirmative, 195 to 193.

Mr. MORTON moved to amend by striking out the whole rule and inserting one which should allow of reconsideration when as many members voted for it as were in favor of the original measure, provided they were a majority of the members voting on the question of reconsideration,—notice to be given, and one reconsideration of the same question only to be allowed.

Mr. WEBSTER thought, that of all the various propositions which the occasion had elicited, that now before the Convention was the most extraordinary. It appeared to him to be, in many respects, objectionable. In the first place, what is meant by requiring as many votes to reconsider a motion, as were in favor of the original measure?—Suppose the questions were on the adoption of an

amendment. A very small number for example, five, might be in favor of it, and all the rest against it. Yet, in this case, by the proposed rule, the vote was *necessarily* to be reconsidered. The honorable gentleman had drawn his motion as if *affirmative* votes only could be reconsidered, and has made no provision at all for the reconsideration of *negative* votes. Again, according to this provision, a motion for reconsideration might be made and discussed, for a week ; then put to the vote, and although carried affirmatively by a majority, have no effect, and be declared a nullity, because the majority was not large enough. He begged leave to dissent, entirely and most widely from all such modes of proceeding. All rules respecting reconsideration were intended and adopted for the purpose of ascertaining, under what circumstances, and by whom, a motion for reconsideration might be brought forward. But when once brought forward, it must, of course, like all other motions, be decided by a majority. Nobody, he believed, ever before heard of a rule, by which a motion to reconsider, when once regularly made, was not to be decided like other motions. It might well be doubted whether the Convention could prescribe any such rules ; rules by which anything more than a majority of members should be required for the decision of any question regularly before it. Mr. Webster proceeded to say, that it was with great unwillingness that he troubled the Convention again on this occasion, but he would indulge the hope, that after the failure of so many attempts to qualify the right of moving to reconsider, in any manner acceptable to the Convention, gentlemen would be more inclined to adopt the usual limitations,—the restriction of the right to some member voting with the majority. No other qualification was so simple or so easily understood and none better secured the right against abuse. He would presume even to take the sense of the House again on this subject, if the present proposition should be rejected, and renew the motion made the other day by the honorable member from Springfield, (Mr. Bliss,) a motion which went to adopt the rule, in the form he had mentioned. He confessed, that he disliked the rule, as reported by the committee in all its forms. Instead of preventing surprise, it facilitated it. It might easily be shown that if anything unfair were intended, such a rule gave great facility to carry it into effect. For example ; it was supposed to be an advantage to move to reconsider ; but such motion was to be limited, in point of time. Suppose, then, a member, favorable to what had been decided, yet apprehending a motion to reconsider, should make such motion himself and give notice that he should call it up two days hence—of course no other motion to reconsider could be made ; yet, at the expiration of two days, this motion might be withdrawn by the mover, and it would then be too late for any other member to make a similar motion. Again, a member favorable to any decision, apprehensive of a vote to reconsider, may presently make such a motion himself, and immediately by the same members obtain an inevitable confirmation of a favorite vote, for it could be reconsidered but

once. These were among the modes, in which all these imaginary securities against surprise, might be turned to the very purposes of surprise. The practice of reconsidering votes, in a legislative assembly, was of recent origin. The general rule has been, and still is, that no proposition can be brought forward directly contradicting what has been done at the same session. Mr. Jefferson calls the whole practice an anomalous proceeding; and a proceeding tending to produce effects by surprise. It was indeed a practice, by which the House put more power into the hands of every individual member than it could itself exercise by the greatest majority. The House bound itself by rules not to give a second reading, or take a second important vote on the same measure, the same day. Hence propositions were so be read on different days, before they passed. But by this practice it was in the power of any individual member to do that which the whole House could not do; and to bring on a second discussion, and a second vote the same day or the same hour. All deliberative bodies establish *stages* of proceeding; and every measure may be debated at each stage. This was useful and salutary; and it was even useful that these stages should be frequent. He hardly cared how frequent. If three readings be not enough let there be four as is the practice in some bodies. But let all the members equally understand how many readings there are to be, and then all will have an equal opportunity of being present and of opposing or supporting—the other course leads to great inequality and undue advantage on one side; because it puts it in the power of an individual to choose his own time and opportunity. Mr. W. said he would appeal to gentlemen who had sat in assemblies where this right of moving to reconsider was under little or no restraint, whether they had not found that in fact it produced no real or effectual reconsideration whatever—whether it is not true, that measures were suffered to pass along through all the regular stages without discussion, and never be debated, nor in reality considered at all, till on the motion to reconsider. If it were so, then in truth the practice was hostile to any real revision or review of its judgments by the House. Indeed it had been said, in the course of this discussion, that the right to reconsider was useful, because it tended to save time; inasmuch as gentlemen would forbear debate through all the regular stages of a bill, in the hope that a majority would be found favorable to their views, without discussion—and still relying, if this hope failed, in the power of discussing the subject on a motion to reconsider. Now he would ask, what was this, but limiting all real and useful discussion or consideration to one single stage and one single time? Would it not be much better that the reasons for measures should be assigned when the measures were introduced; and that opposition, if any were intended, should be made in the regular stages of the proceeding? Gentlemen had spoken on this subject as if any limit on the right of moving to reconsider were a restraint upon the freedom of speech and debate. He confessed he should have had more confidence in the opinions and sentiments of

gentlemen in this particular, if their vigilance had been roused by another rule which had been adopted. He alluded to the rule allowing the previous question to be called, at the pleasure of a majority. If there were anything curtailing a just freedom of debate it was this—as it had sometimes been used, it was certainly an instrument of injustice. Yet, not even the honorable gentleman from Dorchester, who spoke so ably and with so much animation on this occasion, had opposed this rule. For his own part, he presumed it would never be executed in this body—or not except in extreme cases; or otherwise he should himself have hoped to see it stricken out. The previous question was said to have been invented by a man who once resided not far from the spot in which he was speaking, Sir Harry Vane. When it was put in practice to silence the whigs in England, not far from the period of their revolution, one of them, Sir Robert Howard, said, *it was like the image of its author, a perpetual disturbance*. Mr. W. said he should conclude by repeating that if the amendment before the House did not prevail he should move for the adoption of the rule, as it was practised in Congress and other legislative bodies, that is to say, that every motion for reconsideration should be moved by some one who voted in the majority—this might not be, indeed it was not an absolute, an infallible security against surprise and other evil consequences sometimes flowing from the practice. But it was the best security, and was familiar to many gentlemen, and to the practice of many assemblies. Having submitted this motion, he should leave it to the Convention to dispose of it as it thought fit; not intending to trouble them with any further observations on the subject.

The question was taken on Mr. Morton's amendment, and determined in the negative without a division.

Mr. WEBSTER then moved, by way of amendment and in place of the rule recommended by the committee, the following, viz:—

When a motion has been made and carried, in the affirmative or negative, it shall be in order for any member of the majority to move for the reconsideration thereof, on the same or succeeding day.

Mr. MORTON said the gentleman was not in order. (Overruled.) He proceeded to say that he was opposed to the gentleman's motion for several reasons. He said the rule of Congress was contrary to our habits; that Congress, no doubt, had adopted it with very good intentions; it might be found convenient in that body. But in this Commonwealth we had not adopted it, and we had felt no inconvenience from not adopting it. If one member could move for a reconsideration, why not every member? What equity or justice was there in one member's having rights and privileges which all the members had not? If a motion were a proper one, the members of the minority should have the power to offer it, as well as those of the majority. This was an invidious distinction. He said we were accustomed to the rule of our own Legislature. We were restrained by it, but it operated equally on all the members. He said he should not object to the rule of Congress as a rule for the



Legislature, where the impolitic acts of one session might be remedied at the next. On the contrary the proceedings of this Convention would not be open to revision, and were to affect not only the present generation but posterity. It was important therefore that every member should have the power of moving for a reconsideration, and by the rule proposed by himself, the vote on the reconsideration would be as solemn as the original one. The mover of a reconsideration would be restricted by the rules requiring as many members to be present when he makes his motion, and in favor of it, as there were in the majority when the vote passed. This certainly was fair. All the members would be notified of his intention—what could be fairer? He repeated that he was opposed to one member's having privileges from which others were debarred.

Mr. VARNUM said, he felt very happy that the gentleman from Boston, (Mr. WEBSTER) had proposed to substitute the rule practised in Congress. He said it was simple, easily understood and convenient. That he had had many years' experience of its operation, and had never heard any member of Congress make any objection to the rule. That the honor of gentlemen stating that they had voted in the majority had always been relied on, and that no inconvenience had resulted from such reliance.

Mr. QUINCY corroborated the statements made by the member from Dracut. He said he had himself observed the favorable operation of the rule for eight years in Congress, without having experienced the least inconvenience, though he was the whole of that time in a minority. He expressed his satisfaction at the remarks coming from a gentleman of so long experience as a member and presiding officer in the national legislature. He said it would be one of the most fortunate circumstances attending this Convention, if it should be the means of introducing this rule among us. He hoped it would be adopted in our Legislature, where, on important occasions, advantage was too apt to be taken under the rule now in use.

Mr. MORRIS rose and stated a case. Suppose there are four hundred and one members present when a vote is passed; two hundred and one voting in the majority—sixty afterwards come in, whose sentiments coincide with the minority—if this rule prevails, what is to be done? How is the question to be opened? He repeated that it was very important in this Convention, that questions should be open to reconsideration.

Mr. FOSTER of Littleton said he felt very diffident of himself, when he saw around him so many men of talents and experience in public affairs, whose judgment must be venerable, and whose judgment he did venerate. He proceeded to say, that this rule was brought forward by gentlemen as the only thing which would answer the purpose intended. He said it might answer very well in Congress, where they have the power, at a future session, to correct any inconsiderate measure of a preceding session. But it was not so with this Convention, which can have no future session. It

did not, therefore, follow of course, that a rule suitable for Congress, or for any legislative body, would be applicable to the Convention. He went on to state a case which happened in the Legislature ten or twelve years ago, and which came within his own knowledge. An important measure, he said, was brought forward and advocated by one person only. When the question was taken, it was determined in the negative by the vote of the Speaker. A reconsideration was moved for and advocated by the same person only. The Speaker's vote again determined the question in the negative. The measure was brought forward a third time, and carried by about two thirds, and has been since very well approved of. But this rule will put a stop to all such advantages of revision. He concluded by saying, that the rule was inapplicable to a body like the Convention, where a thing once done, was done forever.

Mr. VARNUM begged pardon of the House for rising so often; the gentleman from Littleton, he said, had mistaken his object altogether. He asked, how can a gentleman in the minority get a reconsideration, unless some member in the majority has changed his opinion?

Question called for.

Mr. MARTIN was opposed to the motion. He approved of the rule that had prevailed in the Legislature of this Commonwealth. He said a thing once done by the Convention, was done forever; all opportunities of reconsideration should therefore be allowed. Some of the members who live in the neighboring towns, might go home on Saturday, and be prevented by a snow storm from returning on Monday. There were seventy from Essex. And in the meantime a question might be carried, and they would have no remedy. Mr. President, said he, I call this rule a bridle on our tongues. I hope the motion will not prevail. I hope this Convention will not be bound up by the little parliamentary rule that prevails in Congress. It may do very well there. Most of the members of Congress are lawyers, professional men, men of education; but it is not so with all of us. We know what's right, and what's wrong; but it is not to be expected that we can express ourselves so politely; we have not had the education; but we know when the rights of our towns are infringed.

Question, question.

The question was then taken on Mr. WEBSTER's amendment, and carried in the affirmative—250 to 120.

Mr. BLISS moved that the rules and orders, together with a list of the members and of the committees, be printed for the use of the members. Ordered.

Mr. MARTIN wished to have the rules read. He said he was prevented by the snow storm from being present when they were read before. He said there were a hundred others that had not heard them.

Mr. Martin was answered that the rules were passed, and not then before the House—and he had better get them and read them himself.

Mr. DANA, chairman of the committee on elections and returns, made the following report:—

The committee who were directed to receive and examine the returns of the delegates to the Convention from the several towns and districts, and to prepare a roll of the members, have attended to the service assigned them, and ask leave to report:—That they have examined the copies of the records of the votes of all the towns and districts which have elected delegates to the Convention:

And they find the records to have been duly made, and fair copies of said records duly attested have been produced by the respective delegates—all of which are in the usual form, except the return from Plymouth, by which, it appears that the town-meeting there, was continued by adjournment to the second day.

The committee therefore submit the following resolution:—That all the delegates from the several towns and districts who have elected members, and against whose election no remonstrance has been offered, have been duly elected.

Mr. BANGS said he was against the acceptance of the report, and moved that the House should adjourn.

Mr. SALSTONSTALL moved that when the House adjourned, it should adjourn until Monday, at 11 o'clock. Carried, 194 to 157.

The House then adjourned.

#### MONDAY, NOVEMBER 20.

At 11 o'clock the Convention was called to order by the President, and the Journal of Saturday's proceedings was read.

Mr. SULLIVAN of Boston, observing that he was appointed on two committees, and that it would be impossible for him to serve on both, requested to be excused from serving on the committee on the fourth resolution. Granted.

Mr. WELLES of Boston, for the same reason, was excused at his request from serving on the committee on the fifth resolution.

Mr. WEBSTER, for a like reason and at his request, was excused from serving on the committee upon the third resolution.

Mr. SPOONER of Fairhaven was excused from acting on the third resolution, on the suggestion that he was detained from attendance by sickness; and Mr. BARNARD of Nantucket, appointed in his place.

Mr. DEARBORN of Roxbury, being also appointed on three committees, was at his request excused from serving on the fourth.

Mr. FREEMAN of Sandwich, for a like reason and request, was excused from serving on the first; Mr. SULLIVAN of Brookline, on the ninth, and Mr. WILLIS of Pittsfield, on the seventh.

Mr. DANA, observing that there was some variation in the copies of the constitution which he had examined, and that the copy furnished to the members by the order of the Convention had some interlineations, with a view of furnishing an authority for determining the correct reading, moved the following order:

*Ordered*, That the Secretary of this Commonwealth be requested to deliver to the President, the parchment on which the original constitution was engrossed, and which was deposited in the archives of state, to lie on the table for the use of the members.

Mr. SULLIVAN requested, that the mover of the order should so

amend it, as to procure, instead of the original, an attested copy of it. He said the original ought not to leave the Secretary's office, and if it were brought here it is so large that it could not be conveniently used.

Mr. PRINCE of Boston suggested an amendment which was accepted by the mover, as follows :

*Ordered*, That the Secretary of this Commonwealth be requested to collate and compare the copy of the constitution printed for the use of the members with the original in the Secretary's office, and certify that it is correct, if so ; otherwise to minute the variances.

Thus amended, the order passed.

The report of the committee on elections, which was read on Saturday, was then taken up, and, upon a motion that it be accepted,

Mr. VARNUM of Dracut rose and said he was unable to say what the practice of the house of representatives of this State had recently been on occasions of this kind ; but he thought there was a great impropriety in accepting this report at this time. Towns may hereafter come forward and remonstrate against the election of members who come here to represent them, but after this report is accepted, it will be too late. The acceptance will confirm the members in their seats. He said it was the custom in the house of representatives of the United States to have the report lie on the table, to give an opportunity for contesting the election of members.

Mr. DANA thought there was much propriety in the observations of the gentleman who spoke last, and that the course pointed out by him was unobjectionable. He wished, however, that the return from Plymouth might be read to the House. The Secretary read the return, which stated, among other things, that the town met on the third Monday of October last, and voted to send five delegates. That after balloting for five, it appeared three only were elected ; that the meeting was adjourned to the next day, when Nathaniel M. Davis and Benjamin Bramhall, were duly elected.

Mr. DANA resumed and said the report was predicated upon this return. That, from decisions in our house of representatives, he was of opinion that the members returned were entitled to their seats. The act for calling the Convention says that the towns shall assemble on the third Monday of October, and elect, &c. The constitution ordains that the election of governor shall be on the first Monday of April, and that representatives shall be elected in May, ten days at least before the last Wednesday of that month. There is a distinction between the phraseology of this act and that of the constitution. The constitution requires that the election shall take place on a certain day, or previous to a certain day. This act provides that the town meeting only shall be on a certain day ; it does not say that the election shall be on the same day, or any day in particular. And he submitted it to the House, whether the right of adjournment is not implied in the act, since there is no clause expressly taking away the right. He observed that there

was no remonstrance against the election, and no reason offered for holding it invalid, except from what appeared in the return itself. The election of a representative to Congress was held at Plymouth on the same day in the forenoon, and after the ballot for delegates, it appeared that three only, instead of five, were elected. It was about sun-down when the vote was ascertained. The question occurred whether they had a right to adjourn. A motion to that effect was made and carried, and more persons were present the next day at the adjourned meeting than had attended the first day. He said there had been no suggestion of fraud or improper conduct; the only reason for the adjournment was want of time. He was in favor of the members retaining their seats. He should be sorry to have that ancient town of the landing of our forefathers denied a representation on an occasion like the present, when their error, if any had been committed, arose only from want of judgment. That as there would be no future Convention, there could be no danger from the precedent. He concluded by comparing the present case to what takes place in courts of justice, where relief is given to error when not accompanied by fraud.

Mr. BANGS of Worcester stated that he was one of the committee who dissented from the opinion which they had expressed in their report, as far as it respected the Plymouth members. He thought they were not duly elected, and not entitled to their seats. The words of the act which provided for the Convention, and directed the choice of delegates, were, that the inhabitants should assemble in town meeting on the third Monday in October, and should elect one or more delegates. There could be no doubt that the intention of the Legislature was that the election should be holden on the third Monday of October, and on no other day. If they had not intended to confine the election to a single day, they would have so expressed it. They would have said they should be elected within a prescribed number of days, as was provided by the constitution for the choice of representatives in the General Court. The Legislature meant to make a distinction between this case and that of representatives, otherwise it would have used similar language. They have said the meetings shall be held on the third Monday, and have said nothing about adjourning. It was true the word *then* was not used in the act, but he contended the meaning was the same as if it had been. He asked what would be the consequence of the contrary construction. If town meetings had the power of adjournment, they might have adjourned to any time previous to the meeting of the Convention—to this very day. Delegates may yet be chosen, and the Convention has now the power to issue precepts to elect delegates, where vacancies exist, or to supply those which shall exist. He knew it might be said that this was an assumption of power by the Legislature. But it was necessary that the power should be exercised, and it was proper that the Legislature should assume it, and that they should establish rules. If they had not the power to fix the time of election, they had no power to establish

any other rule. It was not for Plymouth to assume rights that no other town had, or to adopt another rule. He did not agree that it was sufficient that the members present were elected without fraud, and were fair representatives of a majority of the inhabitants. Suppose a delegate had been chosen by a majority of paupers. He would by this doctrine be entitled to his seat. There were many instances in which towns were not able to complete their election on the day fixed for it. But with the exception of Plymouth, not one had thought of an adjournment. They had reconsidered the votes by which they had agreed to send a certain number, and had agreed to send no more than could be chosen on the day fixed by the law. He admitted that if any necessity could be demonstrated for an adjournment he would be willing to admit the members to their seats, but there was no such necessity. It might have been inconvenient; but the town might have chosen; there was time enough; they adjourned before sunset, thinking it would be more convenient to choose on another day, but they might have completed the choice on the same evening.

Mr. QUINCY rose to move that the report lie on the table. He thought the idea of the gentleman from Dracut was a correct one, that questions of this sort should not be sought for by the House, but proceeded upon only upon remonstrance. We should not undertake to disfranchise Plymouth. It appeared to be the general sense of that town that they should be represented by five delegates, and that the sitting members returned were duly elected. He would lay the report on the table, and if a remonstrance were offered against the election of any members, they could be taken up in regular course. But it would be an unprofitable inquiry to enter into the subject, unless the inhabitants represent they are not satisfied.

Mr. SLOCUM wished the gentleman who moved to lay the report on the table would give some reasons for it. He did not hear any. We had had a committee to make a thorough examination of the subject, and the committee had not agreed. What shall we get by laying it on the table? It would only give to the eagle-eyed inhabitants of Plymouth an opportunity to remonstrate.

Mr. STORRY entirely agreed with the gentleman from Dracut, on the propriety of laying this report on the table. It seemed to be the proper course. It would then be regular for any member, by motion or resolution, to take the sense of the Convention on the election of the delegates from Plymouth. The reasons against their election appeared on the return itself. They were, therefore, necessarily before the House, and he thought it bound to act upon the case with or without a remonstrance. He had an opinion on the merits of the case, which he should express on a proper occasion.

Mr. SULLIVAN of Boston was opposed to laying the report on the table. He differed, with reluctance, from the gentlemen who had spoken, and who appeared to have formed their opinions on the course of proceedings in Congress; a course which he thought not

usual in this Commonwealth. Here was no person claiming a seat adversely to the sitting members; no remonstrance from any inhabitants of the town; and no denial of the right of the town to send the number of delegates who had taken their seats. The single question was, whether the town, under the circumstances, was authorized to continue a meeting legally assembled, to the next day by adjournment? Nobody complains of fraud, unfairness, or surprise. Nobody doubts that the two gentlemen sit here with the full approbation of the town. He thought the effect of laying the report on the table might be rather to invite remonstrance and complaint, and to give an occasion to busy people to interfere. He hoped, therefore, the Convention would decide the question at once. He thought it a question of no difficulty, and was opposed to postponing the decision.

Mr. BARTLETT of Plymouth was against laying the report on the table. He said he would state the facts respecting the election at Plymouth. On the third Monday of October, in the morning, the town chose a representative to Congress. Afterwards the question was taken how many delegates they should send to the Convention, and it was determined that they should send five. They proceeded to ballot, and after the votes were counted, it was declared that three only were chosen. It was near dark when the vote was declared, and if they had proceeded to ballot for the other two it would have been necessary to have had lights. This gave rise to a question whether it would be legal to go on. Some thought not. Another question then came up whether the meeting could adjourn. Legal advice was taken, which was in favor of the right to adjourn, and the meeting then voted unanimously to adjourn. The next day the meeting was fuller than it had been on Monday. Mr. B. said he had heard no suggestion of any general dissatisfaction, and he thought there would not be found more than four or five individuals disposed to remonstrate. He thought there could be no question in the case, except in regard to the legality of the adjournment, and as to this he felt himself incompetent to decide; but he hoped the decision of the House would be in favor of the town of Plymouth's having her full representation.

Mr. DUTTON of Boston said he rose to call the attention of the House to the real state of the question. The question was, whether the report of the committee should lie on the table; he said the case of the Plymouth election was part of the report, and might be called up by any member after the report itself was laid on the table; and after the present question was disposed of, he should make a motion for that purpose.

The question was taken for laying the report on the table, and passed in the affirmative.

Mr. DUTTON then offered the following resolution:

*Resolved*, That Nathaniel M. Davis and Benjamin Bramhall are duly elected and returned as delegates from the town of Plymouth.

Mr. HOAR of Concord regretted that since the Convention was only concerned to know that there was a real representation of the wishes of all the people in the Convention, and was not in a situation to establish precedents, for ordinary cases, any question of the legality of an election had arisen. He did not know the gentlemen returned from Plymouth, nor any of their opinions; but since no remonstrance had been presented against them, it was fair to presume that they represented the feelings and sentiments of the town. The question was, whether, on a liberal construction of the law, they were entitled to their seats. If they were, they ought to hold them; and since to deprive them of their seats would be to deprive their constituents of their equal voice in the Convention, it ought not to be done, unless such a construction of the law was absolutely necessary. If, on a liberal construction, they could not be considered as fairly chosen, they could not, of course, retain their seats. He differed from the gentleman from Worcester, (Mr. Bangs) in the premises, rather than in the conclusion. He should agree at once, that they must appear to be chosen according to the provision of the act;—but the question was, what is that provision, under a just and liberal construction? If there were fraud, on the part of the presiding officers, the sitting members, or any other persons, that would be a different question. No such fraud, nor, indeed, any unfairness was pretended. It was admitted that the whole proceeding was fair and well intended:—so that the only question was, were the members chosen, in pursuance of the act, giving to the act a liberal and reasonable construction.

The language of the act is—"that the inhabitants of the towns, &c., shall assemble on the third Monday in October, at a meeting duly warned, &c., and shall elect delegates, &c." The question is, when shall they elect? Not, expressly, *then*, or *on that day*. But, as he contended, on that day the meeting is to be holden, and the delegates chosen at that meeting. It is not necessary, in order to supply the elision in the phraseology, to read the clause thus—that the inhabitants "on that day" elect, &c. It suits as well grammatical arrangement to read it, thus—they shall, "at that meeting" elect. As the words will bear this construction, and as the rights of the town seem to require it, it ought to be adopted, unless some evil consequence should result from it. He saw no such evil consequence upon the case as stated; there was a full and fair expression of the sense of the town; and we ought to receive it, unless prevented by positive provisions or clear expressions of the law. His own opinion was, that if the town assembled on the right day, and by accident or otherwise were prevented from completing the election on that day, they had a right to adjourn to the next day. This was analogous to other cases. Sheriffs were bound to serve process, within certain days—such as to take land on execution. The words of the several laws governing such cases were not dissimilar to those of the act under which we sit. Yet it had often been decided, that if the process were begun within the statute time, it was



sufficient, and might be continued afterwards till completed. Now, why should we adopt a narrower construction, on this occasion, in which the whole people had so great an interest, than the courts of law had adopted, in a mere question of property? Of all questions, it was one best entitled to a liberal construction—And on this very subject of elections, he thought there were precedents in point. By an ancient English statute it had been ordered that the sheriff should *make election* of knights, &c., “between the hours of eight and eleven.” Yet it had always been holden that if he *began* the election between these hours, he might continue it afterwards till a choice were made. This seemed to be reasonable; to grow out of the necessity of the case. If a corporation could not get through its business on one day, it ought of common justice to have a right to adjourn. He would repeat that this was not an occasion to take minute exceptions to the form of returns. He had been well informed, that in the Convention of 1779-80, there was great liberality on this subject;—so much so, that no members coming up from certain towns, the Convention, by its own authority, wrote to such towns to send up members. Whether, therefore, he regarded it as a matter of strict law, or as fit rather to be governed by liberal precedent, he thought the two gentlemen from Plymouth entitled to their seats.

Mr. D. DAVIS, the Solicitor General and delegate from Boston, was in favor of the resolution. He said the question turns upon the power of the selectmen to adjourn the meeting for the choice of the delegates—and he stated as a position, that the power of towns to adjourn their meetings when necessary, was inherent in the corporation, in all cases when this power was not expressly limited or taken away. He knew of but one case when the power of adjournment of a town meeting, was taken away by a general existing provision—which is the case of a general election for state officers. The constitution requires that there shall be a meeting of the inhabitants in the several towns for the choice of senators and counsellors on the first Monday of April, annually—but it is not expressly required by this part of the constitution that the election shall be on that day; and even if not for another provision, respecting the choice of governor, &c., there was no *express* provision against a necessary adjournment of a meeting in that case. But in that part of the constitution which relates to the election of governor, it is required that the meeting for the election of governor, &c., shall be on the first Monday of April, that is, on the day appointed for the election of senators and counsellors, and that the votes for governor and lieut. governor shall be given in on that day.

In the present case there is nothing in the act, under the authority of which the election was made, which requires that the votes shall “be given in” on the third Monday of October. The second section of the act requires that the inhabitants shall *assemble* on that day, and shall elect their delegates; not expressly requiring that the election shall positively, and at all events, take place on that day.

Further, the statute provides, "that at *such meeting* of the inhabitants, every person entitled to vote, &c., shall have a right to vote in the choice of delegates." Now if the power of adjournment is inherent in the corporation, unless expressly taken away in this case, the meeting at which these votes were given in on the 17th of October, was the *same meeting* at which the electors *assembled* on the 16th, it being legally kept open by adjournment; and consequently, "at such meeting" every qualified voter had a right to vote in the choice of these delegates; which right they could not be legally deprived of.

This right to adjourn, is not only inherent in the corporation, and necessary for the exercise of the corporate powers of towns, but is agreeable to all the usages of the country, both before and after the adoption of the constitution. For these reasons, the Solicitor General was of opinion, that the election of the two members on the 17th was strictly legal. But if it were necessary to resort to a *construction* of the statute, the rules of such construction, by all laws, both constitutional and municipal, required that the construction should not only be liberal, but fully in favor of the rights of the party; and that no rule could be admitted which would justify the Convention in giving such a construction of the statute, as would deprive the members of an important right.

Question called for.

Mr. STORY of Salem said he perceived gentlemen were impatient to take the question, but he would request their indulgence while he made a few remarks only. He said he was in favor of the resolution. That on the closest and most impartial examination of the subject he was convinced that the members returned from Plymouth were duly elected. The act for calling the Convention was certainly susceptible of two constructions, one of which would exclude these members from their seats, and the other would not exclude them—and both constructions were capable of being easily defended by men as ingenious as the gentleman from Worcester, (Mr. Bangs.) Mr. S. said, to ascertain the intention of the Legislature, the whole act should be examined. It was clear from the long practice of towns in this Commonwealth that they have the power to adjourn their meetings unless where they are expressly restricted. The power to adjourn town meetings will not be found in any of our statutes. He had examined them for the express purpose of ascertaining the fact. Upon what principle then, does it depend? Necessity. It is a necessary power. The laws include many necessary powers which are not expressed. In the months of March or April, town officers are required to be chosen. The selectmen in calling a meeting, make out their warrants for a specific day, and yet the towns adjourn from time to time until all their officers are chosen. And this would be considered a legitimate exercise of their power by every court of law in the Commonwealth. Representatives to the General Court are to be chosen ten days previous to the last Wednesday in May. What is the practice?

The towns have no express power to adjourn, and yet in contested cases they adjourn from day to day until the election is completed. The Legislature did not, in this act, intend to abridge the powers of towns. If a representative can be chosen at an adjourned meeting, a delegate may. Mr. S. then read the last sentence of the second section of the act for calling the Convention, which says the meetings shall be regulated &c., in the same manner as those for the choice of representatives, &c. He then asked, is it not clear to the gentleman from Worcester, that a delegate may be chosen under the existing laws for the choice of representatives? Mr. S. thought no gentleman would feel so strong in his own opinion, as to say that this construction, maintained for many years respecting adjournments, was not a sound one. He said he stood upon the text. If then by a fair construction, the meeting only, and not the choice, was to take place on the third Monday of October, they were bound by the intention of the Legislature, and the rights of the people, to uphold this return. If it were necessary to step over the law at all, he should not advocate this motion; but when they were met to advise only, not to do the last act, the most liberal construction should be given to the statute if necessary. But it was not necessary. The election at Plymouth came within the laws; and they were bound not to infringe the rights of that venerable and ancient and excellent corporation.

Mr. SLOCUM of Dartmouth wished the gentleman would vary his motion so that it should declare that the gentlemen from Plymouth were entitled to their seats, instead of saying that they were duly elected. He thought they ought to go according to the spirit of the law, and not according to the letter. If they were to go by the letter, he was sure it was dead. But by the spirit, he thought they were entitled to their seats. The President read the order, and said the import of it was the same, as of the language he had suggested. Mr. S. said he thought it more soft and delicate, and he should give his vote more freely if the motion was so amended. He had a great respect for the town of Plymouth, the place where our forefathers first landed, and he hoped we should not deprive them of their rights. We ought to adopt a liberal construction of the law. If that town had taken fire while the town meeting were proceeding in their election, and had time only to adjourn, should we not on the spirit of the law confirm their proceedings, if they had gone on to elect delegates the next day? He thought the House would, and he hoped these members would be allowed to hold their seats, though he did not mean to say he thought they were duly elected.

The question was taken on accepting the resolve, and passed in the affirmative.

Mr. DANA, after some remarks on the crowded state of the House, and the inconveniences to which many members were subjected for want of good seats, moved,

That the delegates from the town of Boston be instructed to inquire if it were not possible to procure for the accommodation of

the Convention, a more convenient place of assembling, and to report as soon as possible. Passed in the negative.

Mr. L. LINCOLN was excused, at his request, from serving on the committee upon the 7th resolution.

Mr. WALTER of Boston moved a resolve instructing the committee appointed on the 10th resolution, to inquire into the propriety and expediency of altering the constitution so that the Legislature should have power to grant to towns, charters of incorporation, with the usual forms of city government. In support of his motion, he stated at some length, the proceedings which had been had, from time to time, in the town of Boston, with a view of obtaining the establishment of such a form of government; and the difficulties that had arisen from the language of the constitution.

The motion was carried, yeas 273, and the House adjourned.

#### TUESDAY, NOVEMBER 21.

The Convention was called to order at 10 o'clock, and attended prayers offered by the Rev. Mr. PALFREY, chaplain of the senate.

The journal of yesterday's proceedings having been read, a report from the Secretary of the Commonwealth, made in pursuance of the order of yesterday, was received and read. It stated that he had compared the copy of the constitution, printed and ordered for the use of members, with the engrossed copy in the office of the secretary of State, and that he had found it incorrect in a considerable number of particulars, which he stated, and that it was correct in all other parts.

Mr. VARNUM moved that a number of copies of the report, sufficient for the use of members of the Convention, be printed, which motion was agreed to.

Mr. RICHARDSON of Dedham was appointed on the committee on the third resolution, in the place of Mr. WEBSTER, who was excused.

Mr. HYDE of New Marlborough, on the fourth, in the place of Mr. DEARBORN.

Mr. PIKE of Newburyport, on the fourth, in the place of Mr. SULLIVAN.

Mr. DUTTON of Boston on the fifth, in the place of Mr. WELLS.

Mr. HOPKINS of Great Barrington, in the place of Mr. WILLIS of Pittsfield.

Mr. GIFFORD of Westport, in the place of Mr. LINCOLN.

Mr. DAWES of Boston was appointed on the ninth, in the place of Mr. SULLIVAN of Brookline; but at his request was excused, and Mr. TILDEN of Boston was appointed in his place.

Mr. DANA, from the committee on contested elections, made the following report:

The committee on contested elections, to whom was committed the remonstrance of Timothy Walker and others, inhabitants and electors of Charlestown, against the Hon. LEONARD M. PARKER's holding a seat in this Convention, have attended that service, and ask leave to submit to the Convention the following report:—

That it satisfactorily appeared to your committee, that the inhabitants of Charlestown, legally qualified to vote at this election, duly assembled in town meeting on the day appointed by law, and voted to send six members to this Convention, it being the whole number they were entitled to by law. That the selectmen thereupon duly opened the balloting, and stated that the poll would be closed at a quarter-past four o'clock, P. M. The balloting was completed and the poll closed at or soon after the time appointed. On counting and sorting the votes, it appeared that the five other members from the town of Charlestown only were elected, and that the said Leonard M. Parker was not elected—the votes having been given for sending other gentlemen, and none having had a majority. After which, it was duly moved and seconded, that the town so far reconsider their former vote as to send but five members to the Convention. Which motion, the selectmen, after consultation, declined putting, and thereupon called on the electors to bring in their votes for a sixth member. The electors then proceeded to ballot, and the selectmen, on counting and sorting the votes, found that the said Leonard M. Parker had a majority, and declared him elected.

Your committee, however, are fully satisfied that the selectmen acted from pure motives, and if it was their duty to have put the said motion, their declining was merely an error of judgment. On consideration of the foregoing facts, your committee respectfully submit the following resolution.

SAMUEL DANA.

*Resolved*, That the Hon. Leonard M. Parker, having been duly elected, is entitled to a seat in this Convention, and ought to be confirmed in his seat.

Mr. DANA begged leave to state, in relation to the report which had been read, that two of the members of the committee were absent when it was agreed upon, and two were opposed to the report. He said that he was himself in favor of it; he could never satisfy his mind with the decision which had been made in the house of representatives, disfranchising a large town containing forty-five thousand inhabitants, (alluding to the Boston election of representatives, in 1818,) for an error of judgment in the selectmen. He proceeded to state some of the facts relating to the election of delegates from Charlestown. No fraud was asserted or pretended in the case. A vote was taken in the first place to send six delegates. The balloting then commenced, and upon counting and assorting the votes, it appeared that 370 ballots had been given, and that five only of the persons voted for were elected. A motion was then made to reconsider the vote which had passed at the opening of the meeting, so far as respected the sixth delegate. The selectmen asked for time to consider of the motion; which was denied them. They then consulted together, and concluded not to put the motion. It certainly was not to be wondered at, when the united wisdom and learning and talents of this Convention had spent two days upon the puzzling subject of reconsideration, that the selectmen of one of our towns should feel themselves at a loss when such a question came suddenly before them.

After the gentleman from Groton had finished, Mr. M. PORTER of Hadley said one fact had been omitted by him, which he should have stated,—that when the whole committee were together, four out of the seven were of opinion that the seat of the gentleman from Charlestown should be vacated.

Mr. J. PHILLIPS of Boston said the facts stated in the report were alone before the House, and that the fact of the selectmen's requir-

ing time to make up their minds, did not appear there. He adverted to the usage in this State, in relation to the election of representatives to the General Court, and said the selectmen were, by the act for calling the Convention, required to regulate town meetings for the choice of delegates, in the same manner as for the choice of representatives, and that the same proceedings were to be had. How would this case stand then, if it had been the case of a representative? It had been decided by the judges of our supreme court, that the right of determining on the number of representatives, was a corporate right of the town. It was on this ground that the house of representatives had declared elections of the towns of Boston and Roxbury invalid, because the selectmen had refused to take the question how many representatives the town would send. With these two concurring decisions staring them in the face, will the Convention make one directly contrary? He would give no opinion on this question, but he thought the subject deserved much consideration. The town of Charlestown, he observed, was six or seven miles long. It was presumable that many of the inhabitants had returned to their homes. It appeared that a majority of the voters were opposed to sending the gentleman who now claims his seat. What then, was the proper course? what was the dictate of good fellowship in such a case? It was the dictate which was followed by Mr. Walker. He made a motion to reconsider the former vote, so far as concerned a sixth delegate. If he had a right to make this motion, the conduct of the selectmen ought not to be sanctioned by the vote of this Convention. The gentleman returned was a man of too much elevation of mind—he was too well informed, to suppose that the remarks now made, had reference to his individual case—that his case, considered by itself, was to be settled—their decision was to form a precedent for the guide of selectmen in all future elections of representatives, and he hoped to have heard better arguments than the good intentions of the selectmen.

Mr. LAWRENCE of Groton, referring to the statements which had been made of the opinions of members of the committee, said he thought it was totally immaterial whether the committee had given any opinion on the question whether he is entitled to his seat. He was sorry to differ from the honorable gentleman from Boston whose experience and familiarity with all precedents of legislative bodies on questions of this sort, entitled his opinion to great weight. But he thought that no decision that should be made here could be drawn into precedent hereafter, because the Convention was differently organized from any legislative body. He was on the committee of the Legislature which framed the law for calling this Convention. He said it was not the intention of the committee that the Convention should be bound by the precedents in the house of representatives any farther than related to the form of proceedings. In settling the number and distribution of the delegates to the Convention, the Legislature fixed upon the principle that towns should be

entitled to elect as many delegates as they can choose representatives in the General Court. He contended that the principles which had been settled in the house of representatives ought not to be drawn into precedent on this occasion. This body was differently organized, and they are convened for different objects. It was intended, and it is desirable, that all the interests, and all parts of the Commonwealth should be as fairly and equally represented as possible, and for this object that a liberal construction should be given to the principles which govern in cases of election. He was glad to perceive the liberality of the Convention, in their decision of yesterday in relation to the members from Plymouth, and he hoped the same liberal principles would govern their decision in this case. He proceeded to distinguish the present case from the cases which had been cited as decided in the house of representatives, and first the case of the Boston members in 1818. The question in that case was decided on the principle that the right of choosing representatives was a corporate right; that the corporation had a right to determine how many representatives they would elect, and consequently that any inhabitant had a right to make a motion for limiting them to a certain number. The number in the present case having been fixed by a vote of the town, it presented on that ground a different principle for the government of the presiding officer at the meeting. He referred to the Roxbury case, and contended that there was no analogy between it and the present case. He adverted to another principle. The representatives in the General Court are paid by the towns, and this fact furnishes the reason why they have a right to settle the number by a vote. This reason does not apply to the case of delegates who are paid out of the public chest. Referring more particularly to the proceedings in the meeting at Charlestown, the first thing which was done when the meeting was full, was to take the sense of the house with regard to the number of delegates they would send. The result was a vote to send six, after which many inhabitants went away in expectation that such a number would be chosen, and presuming they should be satisfied with the members who should be chosen. In this state of things he thought it was not proper, after many of the inhabitants of the town, some of them residing at a distance, had gone to their homes, that the vote should be reconsidered. In the decision of contested elections in the house of representatives, the great object has been to prevent fraud, and to demand that the proceedings of the meeting should be open and fair. He asked, would it not be unfair in a meeting, in which it had been in full meeting voted to elect a certain number, for a part of the inhabitants, after many had retired, because they could not get their favorite candidates elected, to make a motion for reconsideration. He thought it was right in the selectmen to refuse to put such a vote. As therefore the member whose election was now contested, was fairly chosen, in pursuance of the vote of the town, taken at the opening of the meeting when the house was full, and as it was reasonable in the selectmen to refuse

to put a motion for rescinding that vote after a part of the inhabitants had retired to their homes, he hoped that the member returned would be allowed to retain his seat.

Mr. DUTTON. I agree with the gentleman from Groton, and am in favor of accepting the report. There are two provisions in the law, under which we are assembled, relating to this subject. One is, that "all the laws now in force regulating the duty and conduct of town officers, sheriffs, magistrates and electors in the elections of governor, lieutenant governor, counsellors and senators, and representatives, shall, as far as applicable, apply and be in full force and operation as to all meetings holden, and elections and returns made under this act," &c. &c. The other is, that the Convention shall be the "judges of the returns and elections of their own members," &c. The first, I apprehend, sir, is merely formal, and provides that the several towns shall act by their usual organs, leaving it to the Convention to exercise its own judgment upon their proceedings. The right to decide in all cases upon the elections and returns of its own members, is not only expressly given by the law to the Convention, but is inherent in it. This right draws with it the power of deciding upon the proceedings of towns, without reference to the opinion or judgment of any other body even in a like case. This Convention is a distinct and independent tribunal; it neither gives nor takes precedents. It is not bound by the judgment of the house of representatives of the state, upon any facts relating to the conduct of town officers. If therefore a case could be brought from the journals of the house of representatives, resembling this, I should not feel obliged to take it as a precedent. But if this Convention were thus concluded, no such case has been produced. The two cases cited by the honorable gentleman from Boston, stand on very different ground. In the Roxbury case, the motion to limit the number was made before the balloting began, and the house of representatives rightly decided that the selectmen were bound to put that vote. This was substantially the Boston case, and was for the same reasons decided in the same way. But what are the facts in the case now before the Convention? The town was duly convened, and a motion was first made and carried, that six delegates should be elected to the Convention. Upon the first balloting five only were chosen, and a motion was then made and seconded that the former vote to elect six should be reconsidered, and that no more than five should be elected. The selectmen refused to put this vote, and upon this fact the remonstrance is founded. I agree with the honorable gentleman from Boston, that the right in question is a corporate right, but in this case, the corporation had acted as such, before the motion was made. The town in its corporate capacity had a right to determine the number of delegates it would send to the Convention; and it was in the power of any person to make a motion for that purpose, and his undoubted right to have it put by the selectmen. Such a motion was first made—the town acted upon it as a corporation, and determined the number it would send. That



being done, the corporation was *functus officio*, and the individual corporators were called upon to give in their votes. The effect of the motion, therefore, was to reorganize the corporation for the purpose of voting again upon a question which they had once determined—of undoing what they had already done. In this case, I apprehend the selectmen might well doubt; and if in a doubtful case they even decided wrong, I do not think, that such an error of judgment ought to prejudice the right of the sitting member to his seat. In all cases of mistake or error, I am persuaded this Convention will not adopt narrow rules of construction. If the proceedings appear to have been open and fair, free from management or fraud, they will be inclined to decide in favor of privilege. In the present case, I am not embarrassed with any difficulty. No precedent has yet been cited from the practice of the house of representatives, which is against the right of the sitting member; and if we were bound by the same rules that that body is, he might still, upon the facts before us, retain his seat. But this Convention, sir, will I trust, exercise its own powers relative to the elections and returns of its own members independently, as well as equitably and liberally. In the case of the Plymouth election yesterday, it manifested such a disposition; and I do hope that the same liberal spirit will prevail, and that the report of the committee will be accepted.

Mr. THOMPSON of Charlestown said that having been present, and having presided at the town meeting in Charlestown, he would endeavor to state the facts in relation to it, as they were not all contained in the report of the committee. At the opening of the meeting a vote passed unanimously to send six delegates. After the declaration of the votes, Mr. Walker made his motion, and at the same time another motion was made to open the poll for the sixth delegate. The selectmen thought it not fair to proceed any further that day and offered to adjourn the meeting in order that all the voters might have notice of the state of the election. This offer was negatived, and after consultation, the selectmen concluded to open the poll; upon which all clamor ceased. The poll was closed at 8 o'clock, when it appeared that the whole number of votes given in was 408, of which the sitting member had 210. More votes were given in at this balloting than at the former one, when the five delegates were chosen.

Mr. AUSTIN of Boston said that the report was satisfactory to him, but the statement of the gentleman who last spoke gave him additional pleasure. He said the Convention was not to be trammelled by precedents in the house of representatives. There were two questions for them to decide in this case. First, whether the motion to reconsider, made in the town meeting, was in order; in the next place, whether an error of judgment, for there was no pretence of fraud in the selectmen, should operate to vacate the seat of the delegate returned. As to the first question, he was of opinion that the motion was not in order. For what would be the consequences? The whole corporate right must have been open if it was open in

part; if the meeting could reconsider a part of their proceedings, there was nothing to prevent their reconsidering the whole. Consequently, a small number of the inhabitants remaining at the end of the meeting might reconsider all that had been done, and set aside the whole election. The House had had experience that the subject of reconsideration was one of great difficulty. There was no evidence before the House that the town of Charlestown had any by-law allowing a reconsideration in any case, and he apprehended that where there was no rule of that kind, a motion to reconsider would be out of order. The selectmen had their doubts on the subject and wished for delay, but were prevented by the impatience of the meeting. On the supposition however that the motion was in order and that the selectmen were wrong in their decision, as it was but an error of judgment, and as the whole town had expressed a wish to be represented by six delegates, it would be a high-handed act for this Convention to disfranchise them. He hoped therefore that the sitting member would be allowed to retain his seat.

Mr. BLAKE of Boston said there was much force in the remark made by the two gentlemen from Boston, that this House was not bound by precedents in the house of representatives; it was not however necessary to resort to this ground. If the law for calling the Convention and those to which its provisions refer were examined, it would be found that the proceedings of the selectmen were correct. He defied any member to point his finger to a law requiring every motion to be put which is made in town meeting. There had been, to be sure, much liberality in towns in respect to reconsideration—more perhaps than there ought to be; but the vote first passed in this case was of such a nature that it was incompetent to the town to reconsider it, and as the gentleman from Boston remarked, they might as well have moved to reverse the whole proceedings of the meeting. If the Convention however is bound by the decisions in the house of representatives, unless better precedents can be produced than the Boston and Roxbury cases, they were bound to confirm this election; but even if this admitted of any doubt, he felt assured from the liberality shown yesterday, that the sitting member would be confirmed in his seat.

Question called for.

Mr. AUSTIN of Charlestown said that as there was but little opposition to the report, after so many arguments in favor of accepting it, he should consider it indecorous in him to rise, except to call for the question.

Mr. PHILLIPS rose to reply to the arguments advanced by gentlemen in favor of the report. It had been affirmed, he said, that this Convention was not bound by the precedents of the house of representatives, nor the house of representatives by those of the Convention. This was true. But he thought the deliberate decision of that body, (the H. of R.) on laws which were applicable equally to the choice of representatives and of delegates, were entitled to much weight—and that he was not beat down as yet, by the remarks

of gentlemen opposed to him on this subject. Again, it was urged that they ought to show liberality—that they ought not to disfranchise a town for an error of the selectmen. This was begging the question. The town might have voted, had the question for reconsideration been taken, not to send a sixth delegate. If that were in fact the wish of the town, then, by permitting the sitting member to retain his seat, they were disfranchising the town. That he could sound this argument with as much force as his opponents. It was said, too, that the inhabitants of Charlestown were desirous of sending their whole number, and voted to that effect, and then went home not so much caring who should be chosen. Was it possible that they were so indifferent? it could not be true. Gentlemen had argued that a motion for reconsideration was not in order. This was not the case. The conduct of these very selectmen was contrary to this position. A vote had passed that the poll should be closed—how then could it be opened again? Here was a reconsideration. His opponents were on the horns of a dilemma. Either the selectmen were bound to put the motion to reconsider, and then the refusal was wrong, or they should have refused to open the poll, a second time, and then they were wrong. Mr. Phillips thought that gentlemen did not attach sufficient importance to this case. The decision of the Convention indeed would not be a precedent binding on the house of representatives, but coming from an assembly of so much learning and talents, it would undoubtedly have great weight in giving a construction to the laws of elections. He concluded by saying it was his opinion, that the sitting member had no right to his seat, and that the town of Charlestown would be disfranchised if he were allowed to retain it.

Mr. L. LINCOLN of Worcester said the town of Charlestown had already settled the question now before the House. That, supposing the motion to reconsider were in order, it was waived by the remonstrants proceeding to vote after the re-opening of the poll. Supposing Mr. Walker's candidate had been elected. Could he then have remonstrated because his motion was not put? Mr. L. apprehended that his putting in a vote, to use a law term, would have been an estoppel.

Mr. THOMPSON of Charlestown said the gentleman had misunderstood him; he had not said that the remonstrants voted.

Mr. LINCOLN replied that he understood him correctly at first, and said that it was incumbent on the remonstrants to have shown that they withdrew from the meeting without voting.

Mr. DANA said it was due to himself, to answer the remarks of the gentleman from Hadley, (Mr. W. PORTER) which imported an insinuation, not intended he presumed, of unfairness in the representation, he (Mr. D.) had made, respecting the sentiments of the committee on elections. He knew that at a meeting of the committee, four gentlemen had expressed an opinion that the seat of the gentleman from Charlestown ought to be vacated. But nothing was then determined upon, and it was intended there should be another

meeting of the committee, to agree upon a report; another meeting was held accordingly, at which the facts were as he had before stated.

The question was then taken whether Mr. PARKER should retain his seat, and decided in the affirmative.

Mr. HUBBARD of Boston moved that the committee on the 9th resolution, who have in charge the article relating to Harvard University, and the encouragement of learning, be instructed to inquire into the expediency of providing by an amendment of the constitution, for appropriating the lands in the State of Maine, belonging to the Commonwealth, and the proceeds of the sales of the same, to the establishment of a permanent fund for the support of public schools. The resolution was adopted.

Mr. HUBBARD, with a view of preventing unnecessary delay, moved that the chairmen of the several committees on the different parts of the constitution, be instructed to have their reports printed before they are submitted to the House.

Mr. QUINCY opposed the motion. He said it was an unusual and irregular course of proceeding.

It was passed in the negative.

Mr. DRAPER of Spencer moved that a committee be appointed to consider and report what compensation ought to be made to the Secretary, Messenger, and other officers of the Convention, and to receive and report on the accounts for printing, stationery, and other incidental expenses of this Convention.

The motion was agreed to, and Messrs. Draper of Spencer, Valentine of Hopkinton, Paige of Hardwick, Farwell of Cambridge, and Walter of Boston, were appointed.

After which the House adjourned.

### WEDNESDAY, NOVEMBER 22.

The House was called to order at 10 o'clock, and attended prayers made by the Rev. Mr. Jenks, Chaplain of the House of Representatives.

The journal of yesterday was then read.

Mr. PAIGE of Hardwick was excused from serving on the committee of accounts, and Mr. BUGBEE of Wrentham appointed in his place.

Mr. E. MUDGE of Lynn offered the following resolution, which was adopted:

*Resolved*, That the fourth committee, to whom was referred so much of the constitution as is contained in the first section of the second chapter of the second part, and respects the governor and militia, &c., be directed to take into consideration the propriety and expediency of making any, and if any, what alterations and amendments therein, so as to give relief to such persons as have religious scruples about bearing arms.

Mr. QUINCY of Boston presented the following report:

The committee to whom was referred so much of the constitution of this Com-

monwealth as is contained in the fifth chapter of the second part, and respects the University of Cambridge, and the encouragement of literature, and who were directed to take into consideration the expediency of making any, and if any, what alterations or amendments therein;—and who were also directed, by a resolution passed on the 21st instant, to take into consideration the expediency of providing, by way of amendment to the constitution, for the creation of a permanent fund, for the support of public schools, by appropriating for that object the lands owned by the Commonwealth within the State of Maine, and the proceeds thereof;—having attended to the respective subjects referred to them, ask leave to report the following resolutions, for the consideration and adoption of the Convention.

By order of the Committee,

JOSIAH QUINCY, Chairman.

*Resolved*, That it is inexpedient to make any alteration or amendment whatsoever, in the fifth chapter of the second part of the constitution of this Commonwealth.

*Resolved*, That it is inexpedient to provide by way of amendment in the constitution of this Commonwealth, for the creation of a permanent fund for the support of public schools, by appropriating for that object the lands owned by this Commonwealth within the State of Maine, and the proceeds thereof.

Mr. BANGS of Worcester offered the following resolution, which was adopted:

*Resolved*, That the committee on so much of the constitution as is contained in the first section of the second chapter of the second part, and respects the governor, militia, &c., be instructed to take into consideration the expediency of so amending the tenth article of said second chapter, as that in future the captains and subalterns of the militia, shall be elected by the written votes of the train band and alarm list of their respective companies, without regard to age.

Mr. DANA of Groton presented the following report:

The committee of the Convention who were appointed to take into consideration the propriety and expediency of making any, and if any, what alterations or amendments, in that part of the constitution which is contained in the first section of the first chapter of the second part thereof, and respects the General Court, have at several times had the said section under deliberate consideration, and having given to the subject all the attention its importance seemed to merit, they ask leave to report:—That a Legislative department formed by two branches—a senate and house of representatives, each having a negative upon the other—is the most congenial to the interests, habits, and manners of this people, as well as most conformable to approved axioms of policy; and that any alteration in the formation of this department is wholly unnecessary, and would be highly inexpedient.

That the transfer of many of the principal subjects of legislation contemplated in the constitution, to the Congress of the United States since the adoption of the federal constitution, and the separation of that portion of the Commonwealth known as the District of Maine, and the election of it into a new state, have so far decreased the objects of legislative power, that (in the opinion of this committee) only one session of the Legislature will hereafter be necessary, unless upon some great emergency, or unusual occurrence, and in order that two sessions may not be necessary, a different and more convenient time ought to be fixed for the meeting of the Legislature, and settling the elections by the General Court, than the one which is prescribed by the constitution.

That the article which prescribes the time in which any bill or resolve of the senate or house of representatives shall be returned, when the governor shall withhold his approbation, has given rise to some doubts, which ought to be removed by a more explicit phraseology.

Your committee have reviewed the powers which the people conferred upon their Legislature when they adopted the constitution, and find that for a series of forty years, the General Court have annually been employed in redressing grievances, amending and strengthening the laws, and in enacting new ones, as the common good required, and that during this long period no defect of power has been discovered, by which the representatives of the people have been restrained from making all such regulations as are calculated to promote the public safety and happiness, nor has this department been found to possess any excess of power, which requires

further restriction, nor have this committee been able to discern that any attempt at a more perfect enumeration or precise definition of the powers of the Legislature, can be usefully made, and that it is not expedient to make any alteration in the third and fourth articles of this section.

Revenue, being essential to the preservation and maintenance of all governments, a wise republic will take care that the necessary contributions should always be drawn from the people in a manner the most fair and equal, which their situation and circumstances will permit. The regulations prescribed in the powers given to the General Court for this object, were in use in the late province of Massachusetts Bay, and were practised upon, before the formation of the present constitution. Since that period many states have formed constitutions—new republics have sprung up, the skill and ingenuity of financiers have often been put in requisition to devise modes of drawing contributions from citizens and subjects. Your committee have compared the provisions of our constitution with such others as their opportunities have enabled them to, and are of opinion that it will not be expedient for the people of Massachusetts to exchange their system, which has been sanctioned by such long experience, for any other mode.

After a careful examination and an attentive perusal of that portion of the constitution which this committee has been charged to review, they have unanimously agreed to offer only the following resolutions for the adoption by the convention. Which are submitted for the committee,

SAMUEL DANA, *Chairman.*

*Resolved,* That the constitution ought to be altered so as to change the time at which the legislative body shall assemble every year, from the last Wednesday of May to the first Wednesday of January.

*Resolved,* That the constitution ought to be amended so as to render more certain the time in which the governor shall return any bill or resolve to which he may refuse his approbation, by adding to the second article of the first section, these words, "unless the General Court by their adjournment shall prevent its return, in which case it shall not be a law."

On motion of Mr. ABBOTT of Westford, it was ordered that when the House adjourned, it should adjourn to Friday next at 11 o'clock A. M.

On motion of Mr. D. WEBSTER of Boston, the reports presented by Messrs QUINCY and DANA were committed to a committee of the whole Convention and made the order of the day for Friday next at 11 o'clock A. M.

The reports were in the mean time ordered to be printed for the use of the members.

The House then adjourned.

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FRIDAY, NOVEMBER 24.

The Convention came to order at 11 o'clock, and attended prayers, offered by the Rev. Mr. Palfrey.

The journal of Wednesday being read, Mr. WELLES, from the committee to whom was referred the consideration of so much of the constitution as is contained in the 4th chapter and second part, respecting delegates to Congress, made the following report :

"The committee to whom was referred "so much of the constitution of this Commonwealth as is contained in the fourth chapter of the second part respecting delegates to Congress—and the propriety and expediency of making any alterations and amendments therein,"

Report, that by recurrence to dates and facts it will appear, that when the constitution of Massachusetts was adopted in one thousand seven hundred and eighty, it

became a duty in the convention then assembled to provide for the choice of delegates of the Commonwealth to the Congress of the United States agreeably to the system of confederation then subsisting.

For which reason it was in this fourth chapter provided, that the delegates should be chosen in the month of June annually by a joint ballot of the senate and house of representatives. Their mode of commission, of recal, and of a new choice were all with propriety therefore in this article provided for.

But the constitution of the United States having since been adopted by the people, and it having become the supreme law of the land, this article has been thereby virtually superseded or repealed, and has not since had any effect in the constitution of this Commonwealth.

Under these circumstances your committee consider that the said fourth chapter of the second part as respects delegates to Congress is inapplicable to the existing condition of the state of Massachusetts, as well as to that of the constitution of the United States. The committee therefore recommend the adoption of the following resolution:

*Resolved*, That the fourth chapter of the second part of the constitution of this Commonwealth, having become inapplicable to the existing condition of the state of Massachusetts, ought to be expunged therefrom.

All which is submitted. Per order of the committee.

JOHN WELLES, *Chairman.*"

On motion of Mr. WELLES, the report was referred to the committee of the whole and made the order of the day for tomorrow at 10 o'clock.

Mr. AUSTIN of Charlestown submitted the following resolution, which being read from the chair was adopted:

That the committee under the third resolution who have under consideration the part of the constitution relating to the senate and house of representatives, be instructed to consider the expediency of so altering the constitution as to provide that the governor and lieutenant governor, senators, representatives, and electors of president and vice president and representatives in Congress on the years when they are to be chosen, and town and county officers, be all chosen on the first Monday in April, or on the — day of — to begin with town officers, and to proceed with the others in order.

Mr. WARD of Boston, from the committee on that part of the constitution embraced in the sixth resolution, made the following report:

*Commonwealth of Massachusetts,*

IN CONVENTION, NOVEMBER 24, 1820.

The committee to whom was committed by the sixth resolution passed in this convention, so much of the constitution of this Commonwealth as is contained in the fourth section of the second chapter of the second part, and relates to the secretary, treasurer and receiver general, and the commissary general, notaries public, and naval officers, with directions to take into consideration the propriety and expediency of making any, and if any what alterations therein, have attended to the duty assigned them, and respectfully ask leave to report,

That, notwithstanding they are very strongly impressed that no part of the form of government under which we have lived so happily for forty years, and enjoyed all the blessings of civil and religious liberty and freedom, and which has received a practical and judicial construction, and is now well understood, ought to be altered for light reasons, yet, inasmuch as the jurisdiction over impost and tonnage duties, by the constitution of the United States, is transferred to the government of the United States, and this Commonwealth, as an individual state of the Union, ceases to have any jurisdiction over imposts, export and tonnage duties, excepting the qualified one mentioned in the constitution of the United States, your committee are of opinion that the provision for the election of a naval officer in the section committed to them is wholly superfluous and ought to be expunged.

In relation to the choice of notaries public, your committee are aware that their office is an important one; one in the faithful and impartial execution of which, not only the citizens of the United States but foreigners have a deep interest, and that they ought to receive their appointment from the Supreme Executive, or legislative

power of the Commonwealth. And, after due deliberation upon this subject, your committee are of opinion that the election of notaries public, by the two branches of the Legislature, as provided by the section aforesaid, is attended with much expense, and unnecessary delay of legislative business, and cannot be executed, as well, by that department of the government, as by the Supreme Executive. Your committee therefore report the following Resolve.

ARTEMAS WARD, *Chairman*.

*Resolved*, That it is expedient to alter and amend the constitution of this Commonwealth, by striking out the words "notaries public and naval officers," in the first article of the fourth section, of the second chapter, of the second part.

On motion of Mr. QUINCY, the House resolved itself into a committee of the whole on the report of the committee on that part of the constitution relating to the University of Cambridge and the encouragement of literature, submitted on Wednesday, and made the order of this day, the Hon. Mr. VARNUM of Dracut, in the chair. The report being read, on motion of Mr. Quincy, the first resolution offered by the committee was taken into consideration, viz. :

*Resolved*, That it is inexpedient to make any alteration or amendment whatsoever in the fifth chapter of the second part of the constitution of this Commonwealth.

Mr. QUINCY said that on general parliamentary principles it would be proper for him, as chairman of the committee which reported the resolutions, to go into a general consideration of the reasons which induced them to make the report, but as they did not propose to make any alteration of their part of the constitution the provisions of which were well understood, he should refrain from making any observations in support of this resolution, unless he should be called upon to make some explanation, or the adoption of it should be opposed. Considering that the encouragement of literature as already amply provided for in the constitution, and considering that the unexampled prosperity of Harvard College furnished the most satisfactory proof that no provision in relation to that institution was necessary, he was desirous to give an example, which he hoped would be followed in other cases, of a disposition to indulge in as little debate as possible, and he waived the right of saying anything in support of the resolution.

Mr. RICHARDSON of Hingham. Mr. Chairman, I rise to offer my reasons for not accepting the report of the committee now laid on your table, which proposes no alteration or amendment as respects the University at Cambridge, and the encouragement of literature, &c. Sir, I would not derogate from the respect due to the committee who have thus reported ; but, sir, I should violate my own sense of duty and obligations to my constituents, if I should vote to accept this report, as it relates to the 3d art. of the 1st sec. of the 5th chap., where it is declared that the governor, lieut. governor, councillors and senators of this Commonwealth, with the President of Harvard College, together with the Ministers of the *Congregational* churches in the towns of Cambridge, &c., shall be, and hereby are, vested with all the powers and authority belonging, or in any way appertaining, to the overseers of Harvard College. Sir, this constitution, by this provision, bestows exclusive honors and privileges upon ministers of *Congregational* churches, which provision, in my opinion, is directly repugnant to that clause in the Declaration of Rights, which declares, that no subordination of any one sect or



denomination to another, shall ever be established by law. By the provision cited, all other denominations except Congregationalists, are excluded from a very honorable public trust. It is not simply from a trust reposed by the University, but from a high trust reposed by this Commonwealth. Sir, what reason, I would ask, can gentlemen give for this preference, granted to ministers of one denomination. I, sir, profess a strong attachment to the Congregational denomination. I am well satisfied with the mode of worship, and the discipline of this order of christians. But this, in my view, is no reason why I should be satisfied that our constitution of government should draw lines of invidious distinction between the different denominations of christians. This provision appears to me to place all the other denominations of christians in a degree of *subordination* to one, as if all others were disqualified for the high trust. What are the inferences naturally following such a provision? That this State from the first institution of this government and (as a province) long before, has with liberal munificence fostered Harvard University, for the encouragement of arts and sciences, and all good literature, (as expressed by the constitution) tending to the honor of God, the advantage of the christian religion, and the great benefit of this and the other United States—but entrusted, so far as depending on the care of the ministers of religion, to one denomination only. Does not the inference follow, from the exclusive words, or rather from the implied and actual exclusion, that ministers of other denominations are, in the view of the State, unworthy to be trusted with the care of an institution on which the “honor of God, and the advantage of christian religion depend?” It appears that all other denominations are taxed with large appropriations to support the character and dignity of an institution, which, as the constitution now stands, is a sort of holy of holies, which even the clergy of other denominations are not permitted to approach only in subordination. Are there not respectable clergymen of other denominations in the several towns mentioned (admitting that the board of overseers must be limited to these towns) who might be safely permitted to share in the management of that University? In these several towns there are Episcopalians, Baptists, Methodists, Universalists, and perhaps other denominations, who have formed societies of high reputation, possessing great numbers and wealth, who have long contributed in the same proportion that others have done, to erect the numerous superb buildings, to endow liberally the many professorships, or at least to aid them, and in various ways to dignify this renowned institution. But these denominations are all excluded from the least participation in that department of trust assigned to the ministers of religion. If, sir, my views of this subject are erroneous, I hope to be convinced by fair arguments that they are so. But every feature of a free government that tends to cherish and perpetuate a spirit of intolerance among different denominations of christians, is inconsistent, in my view, with liberty, both civil and religious. I am constrained to view this policy of preference

and exclusion as verging too much towards a national establishment of religion, and who has been conversant in history, and does not admit that religious establishments on narrow principles, maintained by civil power and authority, have not proved instruments of great calamity? Sir, I oppose the provision of the constitution on another ground. This partiality to Congregational tenets, in my view, is to render this denomination a spoiled child of the State. I would, however, rely principally on this ground of argument, that any provision in the constitution, vesting a particular class of christians with preference in honors and privileges, is contrary to the general principles and spirit of a free government. The principle in which such provision is established, I am constrained not only as a christian, but as a civilian, to disapprove, because it not only tends to perpetuate jealousy between different denominations in religion, but also to produce, ultimately, the evils of civil discord. Indeed were I an enemy to the Congregational denomination, I could scarcely devise, what I should consider a more effectual measure ultimately to bring it into disrepute. I am aware that it may be said that the board of overseers does not remain exactly as fixed by the constitution. In 1810, the Legislature passed an act providing that instead of the Congregational ministers of the several towns mentioned in the constitution, fifteen ministers of Congregational churches and fifteen laymen should be elected, and forever thereafter constitute the board of overseers. It was further provided, that the overseers should elect this new board. The new board are empowered to supply all vacancies. If this act was constitutional, here is a standing board provided, for which, should the senate and council be reduced in numbers, as they probably will, may constitute a majority in the board against the votes of the members on the part of the State. So that in fact, the act may place the University above the control of the State government. Thus we shall have a powerful institution, built up by the State, and independent of the State. It will also appear, that among the *ministers* created members of the board, by this act, if I mistake not, not one who is not a Congregationalist is to be found. If, sir, the constitution contains a clause that can authorize a Legislature to place the University out of the power and control of the Commonwealth, is it not expedient that *such* provision be stricken out? Placing powerful institutions, even partly the property of the State, out of the control of the State, is certainly the exercise of a prerogative that ought to be solemnly prohibited by the constitution. If this prerogative was deemed to be authorized by the 3d art. of the 1st sec. of the 5th chap., (see constitution,) I humbly hope the Convention will not permit that part to pass unaltered. Sir, I humbly hope, that this Convention will never sanction any authority or precedent in the constitution of government to be submitted to the people, that will indicate an undue partiality toward any sect of christians. If the constitution is again laid before the people, unaltered, I am persuaded that they will not manifest that indifference about it, which seems to have

been implied by the small numbers who voted to call this Convention. I trust that this sentiment will be found to prevail in this Convention, that it is utterly incompatible with all the views of sound and liberal policy, in a free government, to give preference of honor or advantage to any denomination in religion, unless it is intended to prepare the way for an amalgamation of church and state. I hope, sir, that the constitution, after revision, will meet the views of the several denominations of christians, and all classes of the people, as the perfect equality of the reaped corn in Laconia met the view of Lycurgus. Passing by, turning to those around him, he said, smiling, "Does not Laconia look like the possession of brothers, who have just been dividing their inheritance among them?"

Mr. QUINCY said that the views which had been taken by the Rev. gentleman who had just spoken did not escape the attention of the committee. It was observed, and they regretted that this exclusive feature existed in the constitution. He felt as fully as that gentleman could the advantage which would result to the University at Cambridge from calling in the aid of other denominations to participate in the government. He thought that his general principles were correct and that on a view of the whole subject, reasons would be suggested which would satisfy that gentleman and the Convention that the resolution must be adopted. The gentleman's argument proceeded upon the principle that the constitution made some alteration in the charter of Harvard College. But it was not so. There was no grant or gift of anything. The great men who formed the constitution of 1780, knew how sacred pre-existing chartered rights were. Mr. Q. referred to the article from which it had been supposed that that convention altered the charter of Harvard College, and contended that it was not so. So far from exercising a power of altering the charter of 1642, they expressly recognize the existence of the charter, and provide for the exercise of powers under it. There was a necessity for making some provision for the failure of certain official persons under the colonial and provincial charters of government. The charter of 1642, constituted the governor, deputy governor and magistrates of the colony, with the president of the college and a certain number of the clergy, the board of overseers. In consequence of the revolution and of the establishment of the present constitution, there was no deputy governor; and the number of magistrates was so far increased that it was impossible to determine who were properly their proper successors. In this state of things there was a necessity that it should be declared who should take the place of the persons so designated. If it had not been for this necessity they would have left that charter as all other charters ought to be left, untouched. He read a passage from the constitution, to show that the Convention in framing the article state the necessity that existed as an apology for touching the chartered rights of the college. They did not take upon themselves the power to take away rights previously

granted—they only undertook to declare who shall be the successors, under the charter, of a body of men who had ceased to exist, and proceeded to give a power, to those who were declared the successors. He presumed that the Convention would follow the example that was set us by the convention of 1780. They had no difficulty in providing that all the powers which were then possessed by the provincial legislature, should continue to be exercised by the General Court of the Commonwealth, with the limitation which before existed. The gentleman from Hingham was in an error in supposing that they exercised any power over the charter. They left the charter as to all the rights and privileges conferred by it, where they found it.

But the question arises whether the Legislature has the power to make alterations without the consent of the corporation. This question is to be settled by the judiciary. If any alteration is made, it must be made by the Legislature with the consent of the corporation, which consists of gentlemen of great talents and great liberality; and without their consent, if the judiciary should declare they possess the authority. He made these remarks in reply to those which had been made by the gentleman from Hingham, and he hoped they would be satisfactory to him and to the Convention.

Mr. MARTIN of Marblehead moved to strike out the word *Congregational* in the clause, "the governor, &c. together with the ministers of the Congregational churches, in the towns of Cambridge, &c. shall be &c. vested with all the powers and authority belonging &c. to the overseers of Harvard College." Constitution, chap. V, sect. 1, art. 3. He said the gentleman from Hingham had not gone far enough for him in objecting to the word *congregational* only. He wished likewise to strike out *rewards and immunities* in chap. 5, sec. 2. He found fault with the liberality of the Legislature in granting one hundred and sixty thousand dollars to our colleges; and this at a time when the State was obliged to borrow money to pay the representatives. He thought the sum ought to be limited, beyond which the Legislature should not go. He found fault too, with the yeas and nays being kept back, so that the people could not know how their representatives voted on such questions. Formerly thirty-one members of the house of representatives in favor of calling the yeas and nays were sufficient, but now one third of the members present were required.

The Chairman directed the gentleman to reduce his motion to writing.

Mr. QUINCY said that while the gentleman was reducing his motion to writing he would remark that the other subject of this chapter of the Constitution, the encouragement of literature, was taken into consideration by the committee. But they found that object as amply provided for as could be wished. The duty of the Legislature to afford encouragement to learning and the liberal arts, was clearly and forcibly expressed, and they had occasion to admire the wonderful comprehension and forecast of the mind which had dic-

tated this article. He should say more, were it not for the presence of the gentleman (Mr. ADAMS) by whom this article was drafted.

Mr. BALDWIN of Boston said, he wished to be informed whether ministers of any particular denomination were named in the original charter of the college. There had been a change in the government of the University some years since, in which the same idea was kept up. He was not induced to speak on his own account or on account of those of his own religious sentiments, who were excluded from the government of the University, but he thought that by this provision in the constitution, the college might lose the assistance of able and useful men who were not Congregationalists. He mentioned that Mr. Hollis made a large donation to the University, and requested that a minister of this town, of his own persuasion in religion, might be an overseer, but it was refused. If money was granted to the college by Congregationalists only, then it was right enough that it should be governed solely by Congregationalists; but if men of other denominations contributed to its funds, he saw no reason why they should not share in its government. He did not mean to say that the government of the University had not been well administered, nor that it would not have been equally well administered by persons of different denominations. If the original charter expressed that the portion of the overseers composed of the clergy of the six neighboring towns should be Congregationalists, he should wish to have it confirmed. He only wished to know how the fact was.

Mr. QUINCY, in reply, said that he would satisfy the gentleman on the subject of his inquiry. He was happy to hear the remarks of that gentleman. They were wise, honorable, and characteristic of him, and he was sorry that the charter of the college did not permit the board of overseers to avail themselves of his talents and moderation. He read from the charter of 1642, a passage, in which it is ordered that the board of overseers shall consist of the governor, deputy governor, magistrates and *the teaching elders of six adjoining towns*. The teaching elders of these towns were ministers of the Congregational churches, and it had always been the exposition of that charter, that it was confined in its application to the clergymen of that denomination. In the supplementary charter of 1650, which contained a fuller exposition of the grants in the first charter, the corporation of the college was made to consist of the same persons. These charters were acted upon, without any further grant until 1780. It had been understood, up to this day, as embracing the Congregational clergy only, and the Convention of 1780 confirmed that construction.

Mr. J. DAVIS of Boston observed that the grounds of the report of the select committee, on the subject under consideration, had been so fully and clearly explained and enforced, that he should only offer some remarks suggested by what had been offered by his Rev. colleague, (Rev. Dr. Baldwin.) That gentleman, if he understood him correctly, had candidly admitted that if he was assured

that the original charter of the University was, in regard to the clerical portion of the board of overseers, limited to ministers of the Congregational denomination, he should not think he ought to contend for an alteration. Nothing, Mr. D. thought, could be plainer, than that such was the true intent and meaning of the original as well as the confirmatory charter. If there could have been at any time any doubts on the subject, this construction must be considered as the settled construction, by the language of the article in the constitution, now under consideration. If there were originally any thing doubtful or ambiguous as to this part of the overseers' board, it was by the constitution, in express terms, limited to the ministers of the Congregational churches of the six neighboring towns, and must so remain, unless an alteration should be made pursuant to the proviso at the close of the article. If his Rev. colleague therefore, would feel himself restrained from attempting a change in the provision, by a constitutional amendment, if he were persuaded that the limitation was created by the original charter, which was by an act of the Colonial Assembly, he ought certainly to be equally restrained by the express language of the constitution, in regard to which there was no ambiguity, and nothing left for construction. The University therefore rested on chartered rights, which it could not be presumed that the Convention would in any degree disturb or impair. The foundation of that important Seminary might not in this particular rest on such broad foundation, as would be congenial to the liberal spirit of the present times. But, to render justice to our ancestors, we must recur to its foundation. This venerable institution was one of the early objects of their care. They had a strong persuasion of the great importance of a learned ministry. Their institution was dedicated to "Christ and the Church"—and with such views, the clerical part of the board of overseers was introduced, as the most natural and efficacious guardians and promoters of an institution whose prime object was the supply of the country with able and learned ministers. At that period there were no clergy in the Colony but of the Congregational order. If the present state of the country required a wider range in the selection of members for the clerical part of the board, it could be effected by law, if the alteration should be consistent with the charter; and if not, the Convention would doubtless hesitate in undertaking to affect a chartered right, by a proposed amendment to the constitution which could not be affected by law. A different organization of the board of overseers in this particular may be desirable. It may be hereafter effected. In the mean time it should be remembered that no injurious consequences have arisen from this construction of the board of overseers. Uniform catholicism had been the distinguished traits in the history of the University, and no instance of partiality, or injustice, from preference or dislike to any religious sect or denomination, could be pointed out or verified. The Rev. gentleman had adverted to the denial of a favorite wish of one of its distinguished benefactors, Mr. *Holles*, that a clergyman in the town of

Boston, of his religious persuasion, should be admitted to a share in the government. However this might be, it was certain that Mr. Hollis, a man who was an honor to his country, and the age in which he lived, received satisfactory explanations in this particular; so satisfactory at least, that he did not withhold the bountiful donation which he intended. He only requested, ultimately, to have the nomination of the first Professor submitted to his approbation. That Professor was the Rev. Dr. Wigglesworth, a minister of the Congregational order, a choice which Mr. Hollis approved. The correspondence between Mr. Hollis and President Wadsworth will evince his entire satisfaction with the proceedings on the part of the college. He was assured with truth, that youth of the Baptist persuasion would be cheerfully received in the Seminary, and have the same privileges and advantages as the members of any other denomination. The liberality of that gentleman was imitated by successors of the same family. His nephew was still more munificent in his donations. Others of the same name, even down to the present time, have given substantial marks of their attachment to the University, circumstances which afforded additional evidence of their continued approbation of the temper and conduct of the institution which they cherished. In the limitation under consideration, there was nothing new or peculiar. An University in a neighboring State (Rhode Island) was committed almost entirely to members of the Baptist persuasion. The college in New York was in the care of Episcopalians. Mr. D. had no partiality for these theological solicitudes. But we should be careful not to indulge our own views and biases to the prejudice of vested rights. Even in the present times our Legislatures do not hesitate in granting acts of incorporation to give peculiar and exclusive powers to those who originate the institution for which corporate powers are solicited. Upon the same principle by which the requirement for which the gentleman from Hingham contends, should be introduced into the constitution, we might essentially vary and mutilate the charters of other institutions in the Commonwealth, which may not be constructed altogether agreeably to our wishes. Such a course would be justly alarming to the community, and would in no instance, he hoped, be pursued.

After Mr. DAVIS had finished, Mr. MARTIN's motion was read from the chair, and declared by the chairman to be out of order.

Mr. FREEMAN of Boston stated a fact with respect to church rights. The Episcopal minister of Boston, he said, once claimed a right to be an overseer of Harvard University, and applied to the Bishop of London on the subject. He received for an answer that no teaching elders were known in the Church of England. Mr. F. said he was not a Congregational minister himself, and consequently an alteration in conformity to the views of his colleague from Boston (Mr. Baldwin) would be for his advantage; but the fact was, that Harvard University was a Congregational institution. He gave his testimony however, to the liberality it had shown towards christians of different sentiments. He observed that there were two colleges founded for

a particular religion, and instanced the college at Providence, where it is required that the President shall be a Baptist.

Mr. BALDWIN rose to correct a mistake. He said he was a Fellow of Brown University. That college was not an exclusive one. The founders of it were principally Baptists, and they provided that the President should be a Baptist; but all the other officers might be of other denominations. That in fact, eight of the present Fellows were Baptists, and four were not; and of the corporation, consisting of thirty-six members, twenty-two were Baptists, four Congregationalists, five Episcopalians, and five Friends.

Mr. TUCKERMAN of Chelsea said he should vote for the adoption of the resolution for two reasons. 1st. The convention of 1780, he thought, rightly restricted themselves to declaring who should be the successors of the magistrates and teaching elders who constituted the corporation before that time. They declared that the successors of the teaching elders were the Congregational ministers of the six adjoining towns. 2d. The act of 1810, in proposing certain changes in the charter, was conditional on its being accepted by the corporation. At the meeting of the President and Fellows of Harvard College, they were in a formal manner accepted by the corporation and board of overseers. It was therefore understood that the Legislature had no right to make any change in the charter, without the consent of the corporation. If the Legislature had no right, this Convention has none.

Mr. J. PHILLIPS of Boston said, if he understood gentlemen correctly, the objection to the provision in the constitution, was on account of its being exclusive. If the question could be settled by the Convention, it might be worth while, perhaps, to make a different provision; but where chartered rights were concerned, the Convention must pause. The original charter of 1642 had made use of the terms, *teaching elders*. What was the intention of the Legislature? Every lawyer, he said, knew the value of cotemporaneous interpretation of laws; and from 1642 to the present time, the charter had been construed so as to exclude Episcopal and all other ministers, except Congregationalists, from being overseers. Forty years ago the Convention only changed the name. In substance the Congregational ministers were the same as the teaching elders. It might be desirable to open the office of overseer of the University, to ministers of all denominations, but it could not be done without the consent of the University. The Legislature undertook some years ago, to alter the charter, but it was upon condition that the University should accede to the alteration. The University had its rights defined in its charter, and while it kept within the limits marked out by it, it was independent of the Legislature.

Mr. PARKER of Boston (the President) wished his colleague (Mr. Baldwin) to review the principles he had laid down. He understood him to say, that if the privilege of being an overseer of the University were given by the original charter to Congregational ministers



exclusively, the grant ought to be confirmed. This principle was a sound one, and after hearing the passages which had been read from the original charter (by Mr. QUINCY) he understood him to admit that the privilege was originally given to men of that persuasion, as it was a matter of general information that the teaching elders were Congregationalists. It would seem then to follow from these two principles, that it is not in the power of the Convention, if it were desirable, to alter the government of the University; but the gentleman had laid down another principle, which might seem to him to give the Convention a right to interfere, viz., that those who had contributed money for the support of the institution, ought to have a share in the government of it. He (Mr. P.) apprehended however that the gentleman would see cause to abandon this principle. Suppose a person of the Legislature makes a voluntary donation to an institution of this kind. Can such a donation be thought to give a right to interfere in the government of it? If the grant is made upon that condition, this alters the case. But suppose the Legislature of Rhode Island should make a large donation to Brown University; it surely could never be imagined that the Legislature would have a right to say, that any other person than a Baptist might be President of the University.

Mr. D. DAVIS of Boston. I should not rise upon this question if my sentiments had been expressed by any gentleman who has preceded me in the debate. And my principal object will be to explain and enforce the proposition taken by the Rev. gentleman from Chelsea, viz., that this Convention have no authority to interfere with the rights, privileges and powers of the University, as they now hold them under the charter of their incorporation. I go further and state, that if such an interference should be made or indulged by this Convention, their doing would be void and of no effect, unless *accepted* by the government of the University. Before I proceed to the explanation of this principle, I would remark, that the liberal principles and feelings expressed by the Rev. gentleman from Hingham, are felt and reciprocated by all good men, and particularly by the friends of the college; but I apprehend the gentleman last mentioned is under a mistake when he says that the provision in the article of the constitution now under consideration, which designates ministers of the *Congregational* churches as a part of the number which is to compose the board of overseers, is repugnant to the third article of the declaration of rights, which provides that there shall be no subordination of one sect or denomination of christians, under another. This part of the college charter has no reference to the religious establishments of the State, or of the University, or of the people at large. It only comprehends a provision, that certain clergymen of a particular description, residing in several towns in the vicinity, shall, together with the Senate and Supreme Executive of the State, compose a part of the board of overseers. This board have no ecclesiastical powers or privileges, are composed of a good majority of laymen, and their principal business is to superintend and

advise as to the temporal concerns of the University. The University have, and ought to have the exclusive right of selecting and appointing their own officers and governors—and that part of their charter now under consideration contains nothing more than a provision to that effect. I will now explain the reason why this Convention ought not and cannot interfere with the government of the University, so as to alter or change the same in any respect whatever, without its consent. The charter of the University was granted in the year 1642, by the colonial government. It was granted and confirmed by the competent authority, then existing. This charter is a grant, a contract between the grantor and the grantees—the government, and the corporation accepting the charter. By those principles which are of universal application and authority relative to the law of contracts, there exists no power in any government of laws, founded upon the freedom and equal rights of the people, by which this contract or grant can be altered or impaired without the consent of the parties to it. The rights and obligations resulting from it *are vested* and cannot be taken away or abrogated by the arbitrary act of any man or body of men. When the constitution of 1780 was made and adopted, these rights and obligations were recognized and confirmed by that instrument. It became expedient for the Convention which framed that constitution, to give such a construction to the original charter, as to declare who were the successors to this ancient corporation; this in my opinion was expedient, though not absolutely necessary; for it is a principle of the common law, that a change of government does not abrogate the rights of a corporation. It was *expedient*, because that part of the board of overseers designated by the terms “teaching elders” required an explanation, and a cotemporaneous construction. It is well known to those who recollect the style of the ancient laws of Massachusetts, both before and after the adoption of the charter of 1692, that teaching elders were the same persons that we now call ministers of the gospel, or public teachers, and that in the year 1692, all these teaching elders or ministers of the gospel, were teachers or ministers of the Congregational churches. A recurrence to the ancient laws and ecclesiastical history of the State for a century and a half, will show this to be the case. The construction, therefore, given in this case, by the convention of 1780, was unquestionably correct; but whether it were so or not, it has now become immaterial to us of this Convention; for this construction was adopted and *accepted* by the government of the University; and it may be said, that in this respect as well as in others, they hold their charter under the highest source of human power and authority, viz., by the grant, assent, and declaration of the whole people of Massachusetts; not merely by *legislative*, but by the highest source of power and right, the constitutional authority of the Commonwealth.

If this reasoning be correct, it follows conclusively that neither the Legislature, nor even the whole people of this State can deprive the University of their chartered rights—these are unalterably estab-

lished and confirmed by the constitution of the United States, which provides that no laws shall be made, "impairing the obligation of contracts"—the charter of a corporation is a contract between the government and the grantees—if the grant respects a religious or literary institution, the consideration upon which it is made is *mutual*; on the part of the government the consideration is the good morals, principles and literary improvements it is intended to encourage and disseminate; on the part of the corporation, the consideration is, among others, the employment and advantages it gives to its officers and founders. This contract is sacred, and under the protection of the highest authority, the constitution of the United States; and on this account it follows most clearly in my mind, that if we were to do an act in this Convention which altered the government, or the rights of the University in the smallest degree, our act would be null and void, unless accepted and assented to by the government of the college. I express this opinion with more confidence, because we know that this question has recently come before and been decided by the highest judicial authority of the United States, in the case of Dartmouth College; that case presented a question precisely similar to what might arise between the government of this state and the University of Cambridge, in case we should adopt without its consent any provisions which might impair or infringe their chartered rights. The legal discussions in the case of Dartmouth College, both by the bar and the bench, have not been surpassed for their learning or their liberality, in any country or in any age, and as the questions in that case have been decided under the advantages of so much light and deliberation, and by an authority, by which we are all at this moment bound, it cannot be expedient to depart from its salutary influence. One word further; if the University now or hereafter wish for a change in its government, either in its principles, or in the mode or the persons by whom it is administered, the legislative power have competent authority at all times to afford them the desired aid. It is clear that we cannot *force* upon them any such change.

Mr. SAVAGE of Boston said he should not rise to detain the House, but that no gentleman in the course of the debate had taken up the subject on the grounds, on which the special committee had proceeded. Yet he believed the result was capable, if anything was, of demonstration; and if the members would patiently consider the subject, the result in the Convention must be as unanimous as it was in the committee room. He referred to the constitution to show that all the three articles of the first section of the 5th chapter were framed in a similar form, and they should each have the same construction. The first article begins with a recital of facts, that the college was founded in 1636, and that many persons of great eminence have been in it initiated in arts and sciences qualifying them for usefulness in church and state, and that encouragement thereof tends to the honor of God, advantage of religion, and

benefit of these United States, and here ends the recital; and the article proceeds to *declare* a present right, that the corporation shall have, hold and enjoy all the powers, authorities, &c., which they now have, or are entitled to have. Here was no assertion or qualification of a principle, no restraint on the Legislature or command to them, but a mere declaration of a state of things existing in 1780; and it was all true. To be sure, the rights would have been enjoyed by that institution, if not so declared at that time; but as it is declared, anything now done to alter the phraseology, would be in effect to resolve that the state of things in 1780 was not truly and justly stated in the constitution. The second article begins with a recital, that by divers persons, gifts, grants, devises, &c., had been heretofore made, and proceeds to *declare* that they are confirmed. He demanded, are they not confirmed? The Convention in 1780 could have declared no otherwise; and if in this part of the chapter we make an amendment, we resolve in effect, not only that they should not have so declared, but that indeed they did not so declare justly and truly. The third article begins by recital of the board of overseers constituted by the act of 1642, and of the necessity of ascertaining the successors of that board, and *declares* that the governor, lieut. governor, council and senate, *are* and shall be deemed their successors, and then, with the president and ministers of the Congregational churches of Cambridge, Watertown, &c., they are vested with all the powers and authorities belonging to the overseers.

This part of the constitution he contended must be taken altogether with reference to that time, as a declaration of facts and of rights then existing. That the articles are all of one form, made, if I may so say, on one last. It does not, like other parts of this instrument, look to any future time. It asserts no principle, commands no duty, gives no new right, takes away or qualifies no old one, requires nothing and restrains nothing in the Legislature or any other branch of the government. It merely states, what, if anything was said, it could not avoid stating, and what must then have been and must now be the universal opinion of the community, that the University, in all its privileges, estates, members, rights, officers, corporation and overseers, *then* stood on the rights therein recited, the same rights as every other corporation. It was not in the nature of things, that that Convention should be supposed to give any rights at that time, nor can the case permit a supposition that any were or could be taken away. The wise men who framed this constitution use very different language when they assert any new principle, secure any new right, require any duty, impose any restraint on the Legislature, or any other body; but in all these articles they merely *announce* an existing state of facts, declare the governor, &c., *are* successors in 1780, and if we change the words, we declare an absurdity in 1820, that they were not overseers in 1780. We might as well vote seven times seven to be fifty and not forty-nine, as alter the phraseology, because we would have *desired* others, when we had to state a fact which could not be

stated in others. The word "congregational" is proposed to be stricken out ; but if it is stricken out, the declaration will not be true in the constitution. Do not the gentlemen from Hingham, he asked, and Marblehead, and my reverend colleagues, see at once, that the language is altogether declaratory of what *is*, not what *ought to be*? And is not the conclusion of the committee in the first resolution irresistible? By the proviso at the end of the articles, the Legislature are empowered, in as full a manner as the Legislature of the late province, to make any alteration "*conducive to its advantage*." The framers of the constitution well knew, that no other alterations could be made by the Legislature. The fostering kindness of the Legislature has in fact been three times applied. The first in 1810, changed the constitution of the board of overseers in part, by excluding the senate and introducing fifteen laymen specially chosen at large, and restricting the clerical part of the board in number. There seemed to be some reason for this, because the board was thought too numerous. And indeed the number was much increased from the state of it in 1642. The governor, deputy governor and magistrates, were few. The *assistants*, who only were the magistrates in 1641, amounted to eight; in 1643 to ten; in 1642, the year of creation of the board, the number cannot easily be ascertained. The fifteen laymen were, with the governor, lieutenant governor, council, president of the senate, and speaker of the house, substituted. But the community were not satisfied, and they should not have been satisfied. Two years after, the law was repealed; but the repeal was total, and unhappily the advantage of the first act, which introduced a small body from the community at large, was not retained. The community were not satisfied, and they ought not to have been, for it was taking away overseers already appointed, and so violating their rights and those of the college. The third act, soon after, makes the board as now constituted, keeping the senate with other persons of the civil list, as exhibited in the constitution, and the additional laymen of the act of 1810. So that it is now as it ought to be, not indeed as it was declared by the constitution, but as under that instrument, according to the proviso, it might be made. The clerical part of the board are *congregational*, but the lay part have several different persuasions. If there were a disposition and tendency to evil, it would be counteracted, and nobody can entertain an apprehension of a mean, exclusive, bigoted spirit, were it possible so find such in the distinguished gentlemen who must ever be a minority of the board. The governor, lieutenant governor, council and senate, of every possible denomination, men whom the people delight to honor, are the great majority, and always must be ready to prevent any such injury. Mr. S. said he rose merely to state the views of the committee to whom the subject was referred, and did not feel obliged to vindicate the college against illiberality. Many of the committee, perhaps a large majority, were sorry for the expression in the constitution, but they were satisfied it could not be otherwise, because such

was the fact in 1780, and had been from the commencement of the college. Such is the fact *now*, and it seemed at first to several of the gentlemen, and to him, that we might *declare* the present successors. But, said he, we need not declare who for all succeeding time shall be successors. Who *were* in 1780 the successors of the board of 1642, it was *necessary* to state; who they now *are*, it is not necessary to state, because all know from the law. A constitution is not intended to point out minute exercise of rights, but only the rights themselves. There always will be successors, we need not fear. Those who have rights to their seats have the duty of filling vacancies. But in 1780 there was a *necessity* of *declaring* or *announcing* the fact. For ninety five years there had been a failure of *formal* right to seats at that board, either in posse or in esse. In 1685 all the charter rights of Massachusetts were taken away by a most arbitrary and tyrannical decree in chancery, on a scire facias to annul the charter of Charles I. All rights of all sorts, dependent on that charter, were annulled. Not, sir, said he, that my ancestors or yours were, or could be, deprived of the actual possession of their highest rights. They held them by something better than paper. No doubt, sir, that nullification was a nullity; and after the restoration of liberty, with William and Mary, any tribunal, and especially the highest, must have overruled the extravagant edict which pretended to annul our charter without our being heard. From 1685 to 1780, no declaration could be made, who were the successors of the former board, except by the college itself. They called to such seats proper men in the successive periods, and the constitution *confirmed* in their places the men who were then found in those places. They were the very men designed by the *colony* charter, as far as it could be followed. But the *province* charter of William and Mary, though it was good for liberty and right, was not sufficiently good. Application was made, time and again, relative to the college, and no change could be obtained, when it was necessary. Laws, orders, regulations were made, but could not take effect, because our governor was not "from amongst us." All laws, rules and orders were submitted to the king in council, and no improvement for the college could be expected. His majesty's governor had orders, and with those orders, providing any supervision by his majesty, or deputy, the college would never comply. Had the institution complied, the free born sons of the college in the General Court never would have consented to an enactment. Now, it was proper, though no failure of a good corporation and good overseers had ever been suffered, it was becoming in the Convention of 1780, to state a declaration of fact, for all those illustrious men and their fathers had been born since the original *attempted* infraction of right in 1685. I can inform the committee said Mr. S. how these articles were introduced, and these will support the resolution under debate. In the Convention which formed our constitution, so many sons of an illustrious mother considered the University as an object to be named, I am

happy that as many are here to revise their instrument. They inquired of the president, and other authority of that day, probably of the corporation and overseers, and asked if anything need to be done. What was the answer, and the result? The governors of the college offered these propositions, which were inserted without alteration. What are they? Any restraint of power to be exercised against them? No, sir, but merely a declaration of what their rights had been, and then were; with authority to the Legislature to make any such acts as would be conducive to their advantage, not specifying any acts, demanding this or denying that.

When in select committee these articles were taken up, after diligent perusal of them and consideration of any amendments of which they at first were thought by some susceptible, we all agreed there was nothing to be done. No principle is asserted in them, of which we could suppose a discussion now to have any influence. It is merely past history, and it seemed not necessary to declare the present economy of its administration. We were satisfied that the Legislature had all necessary power, and it is evident to all, that the Legislature here can do nothing but right. We sent indeed to the President, thinking that if it were desirable to speak of the present state of the Institution so highly favored, some amendment of phrase declaratory thereof, might be introduced. It might seem, that University should be substituted for College, in one or two places, but both names are used with propriety, and the change is unnecessary. Her sons are more anxious that she should be an UNIVERSITY in fact than in name. We agreed, sir, to the report, being perfectly satisfied that no alteration could be made without an absurdity, except by striking out the whole section. If the whole be a mere declaration, I see not, that any gentleman can fail to agree to the resolution.

On motion of Mr. PICKMAN, the committee rose, reported progress, and asked leave to sit again, which was granted, and the House adjourned.

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SATURDAY, NOVEMBER 25.

The House met according to adjournment.

On motion of Mr. NICHOLS of S. Reading,

*Resolved*, That the committee on the tenth resolution, respecting oaths and subscriptions, be instructed to take into consideration the expediency of altering the constitution, so as to substitute affirmations for oaths in all cases whatsoever, where the party shall entertain religious scruples in regard to taking oaths.

On motion of Mr. ENOCH MUDGE of Lynn,

*Ordered*, That the committee on the seventh resolution, respecting the judiciary, be instructed to consider the propriety and expediency of providing in the constitution, that the person of a debtor, where there is not a strong presumption of fraud, shall not be committed or continued in prison, after delivering, upon oath or affirmation, all his estate, real and personal, for the use of his creditors, in such manner as shall hereafter be regulated by law.

On motion of Mr. WILLARD of Fitchburg,

*Ordered*, That the committee on the fourth resolution, be instructed to inquire into the expediency of so altering the constitution, as that captains, subalterns, non-commissioned officers and privates of the militia, be exempted from payment of a poll tax during the time that they are liable to do military duty.

On motion of Mr. L. LINCOLN of Worcester,

*Ordered*, That the secretary forthwith cause to be made a list of the members of this Convention, arranged alphabetically, by their surnames; and that in taking the yeas and nays upon any question, the members shall be called to answer in the order of their names on that list.

Upon motion of Mr. QUINCY, the Convention again resolved itself into a committee of the whole, upon the report of the special committee on the ninth resolution: Mr. VARNUM in the chair.

The question before the committee, was upon the adoption of the first resolution contained in the report, viz., that it was inexpedient to make any alteration in the constitution, so far as it respects Harvard University.

Mr. NICHOLS of South Reading said he was satisfied, from the discussion of the preceding day, that the Convention had no power to interfere with the chartered rights of the University. But he was as much averse to the invidious distinctions which had been commented upon, as the gentlemen who had inveighed against them; and as the provisions of the constitution respecting the University, were inoperative at this time, he would move to amend the resolution in discussion, by striking out all the words after resolved, and inserting, "that it is expedient that the first section of the second chapter, which respects the University, be expunged from the constitution."

Mr. D. WEBSTER said that the time might come when such a proposition might be very proper. If the constitution is to be a new draft—a new constitution—then the constitution of 1820 ought to omit everything that is not applicable at the present time; but he thought the gentleman's motion premature, and he hoped it would be waived.

Mr. DANA said he was not prepared to act on the proposition of the gentleman from South Reading. Mr. D. took a view of the present form of government of the University. The corporation consisted of seven members, called the president and fellows, with whom originated all laws and regulations for the government of the University. This was as it should be. There was a board of overseers, who had a negative only on the proceedings of the corporation. This, too, was right. The causes of doubt in the subject before the committee, arose from the manner only in which that board was constituted. It was now composed of the governor, lieutenant governor, council and senate, &c. He could not tell what alterations might be made by the Convention, with respect to these officers of the State government, nor of course how these alterations would affect the board of overseers. He therefore thought the gentleman's motion was premature, and should move that the



committee rise, with a view to the report lying on the table, until other things should be first settled.

Mr. HUBBARD of Boston said he did not know that the members of the committee would be better prepared than they were then; that they would have to go over the same ground again, if the committee rose, and so lose a great deal of time.

Mr. WEBSTER thought the gentleman was out of order. The question was whether the committee would rise.

Mr. HUBBARD asked whether the whole subject was not before the committee, for the reasons for not rising were to be taken from the whole subject.

Mr. WEBSTER said the gentleman was entirely wrong. On a motion of this kind, it was never heard of, that the merits of the general subject should be discussed.

The Chairman considered the motion as analogous to a motion to adjourn.

Mr. HUBBARD said the subject had been assigned for to-day, and he thought they should not be better prepared by postponing it.

Mr. BLAKE of Boston was in favor of the committee rising. He was unprepared himself, and he apprehended it was the case with others. He had not made up his mind, whether the University were a public or private institution, and he was not sure that the Convention had not the right to mould the government of it into what form they pleased.

Mr. QUINCY said, as gentlemen had been allowed to give reasons for the committee rising, members ought to be allowed to give reasons on the other side. He said there was an immense business before the Convention; they might talk for twenty years upon the subject which had been discussed, but he conceived it lay in a nutshell. That after the light thrown upon it yesterday, the House were as ready for the question as they ever would be. The debates would be protracted to an endless length by the course they were pursuing.

Mr. BLAKE differed from the gentleman as to the discussion of yesterday being satisfactory. He had expected much instruction from it. The three gentlemen from Boston had given each a different reason for the report of the special committee. One of them, (Mr. QUINCY,) if he understood him right, lamented that they were foreclosed from altering the government of the college, as the constitution had only given a construction to chartered rights. Another, (Mr. D. DAVIS,) went on a different ground, making no attempt at construction; he said the constitution made a new grant, and that it was in the nature of a contract, and therefore not in the power of the Convention to interfere. The third, (Mr. SAVAGE,) thought nothing was said in the constitution that was applicable to the present time, and took the ground of expediency. He (Mr. B.) was not prepared to say whether either of them was right. He wished no injury to the celebrated and highly respected Seminary at Cambridge. He did not wish to interfere with its operations;

but he wanted the subject before the committee to be thoroughly understood and discussed; it had not been yet. It involved a question of law of great importance. He hoped the committee would rise, if the Convention should sit all winter and summer too.

After a few remarks by Mr. QUINCY and Mr. WEBSTER, the committee rose.

On motion of Mr. WEBSTER, in Convention, the committee of the whole was discharged from the consideration of the whole subject which had been before it, and the report ordered to lie on the table.

*Time of session of the Legislature.*—The report of the select committee on the subject of the General Court, being in order, the Convention resolved itself into a committee of the whole: Mr. WEBSTER in the chair.

The report being read, and the question stated, on the adoption of the first resolution, as follows:

*Resolved,* That the constitution ought to be altered, so as to change the time at which the legislative body shall assemble every year, from the last Wednesday of May, to the first Wednesday of January.

Mr. DANA of Groton thought it a duty to go into an exposition of the reasons which induced him, as a member of the special committee, to agree to the report. That part of it which relates to the constitution of the Legislature by two branches, he thought was in conformity with an universally acknowledged principle at the present day. A contrary doctrine had been maintained formerly, but it was now exploded, and no argument would be necessary to induce the Convention to accede to the course pursued by the committee in this respect. He passed to the second portion of the report, which had given rise to a resolution for an alteration. This he thought would be readily acceded to. The subject of the third portion of the report, required a little further consideration. The powers conferred on the Legislature, he thought were sufficiently ample.

It had been sometimes doubted whether power was granted to establish a court of chancery. It was important that they should possess that power, but he thought they already possessed it. He referred to the article which confers the power of establishing a judicatory. The doubt which had been expressed, had arisen from there being no expression which relates to the particular powers of a court of chancery. If this doubt were removed, as he thought it would be, by the expression of the opinion of this Convention, the only question hereafter for the Legislature to determine, would be the expediency of establishing such a court. He proceeded to consider the proposition for such an alteration as would expressly grant to the Legislature the power of granting to towns charters of incorporation with city powers. He had no doubt that the Legislature possessed this power already. The power of granting acts of incorporation of any kind, was nowhere conferred in express terms, yet the Legislature had always exercised that power. He thought the difficulty arose only from the provision that the selectmen should

preside at certain elections. This difficulty would be easily overcome by granting a charter, with the usual officers of city government, and with selectmen whose only duty should be to preside at such elections as by the constitution the selectmen are required to preside at. For all other purposes the usual city officers might be appointed. He proceeded to consider some of the cases in which it had been decided by the courts of judicature, that the Legislature had no right to interfere, such as applications for new trials. He thought that such questions were most properly decided in the courts of justice, and that the community had acquiesced in this course. He proceeded to inquire whether it would be useful to attempt a more precise definition of powers. Were they about to draft the constitution anew, they might have made some improvement in this respect, and adopted a better arrangement. But the committee, impressed with the apprehension lest they should do too much, had thought that no alteration should be recommended, which did not appear to be required by imperious necessity. With these views, which he explained much more at large, he said the committee had come to the result, that it was inexpedient to make any alteration in this part of the constitution. He proceeded to consider that part of the chapter which confers on the Legislature the power to raise taxes, imposts, &c. In some states, he said, that a poll tax was thought unequal, and many persons had contended that taxes should be entirely drawn from property. But on recurring to the practice that had always prevailed in this Commonwealth, he thought it inexpedient to make any alteration in this respect. All men are bound to the government by the same tie. All equally receive protection from it—and he thought if it were submitted to that class of men who would be exempted from contributing to the burdens of the public, if the poll tax were abolished, to determine whether that tax should be retained, they would be too generous to consent to receive the protection without contributing their proportion to the support of it. In regard to the power of laying an excise upon articles which may be subject to an excise duty imposed by the General Government, he thought that it might be safely left to the discretion of the Legislature. As to the proposition for changing the time of the assembling the Legislature, it was an abstract proposition on which every member was competent to judge for himself, and which needed no illustration. He concluded by moving that the committee accept the first resolution.

Mr. PICKMAN of Salem did not agree with the gentleman who reported the resolution, that the first Wednesday of January was the most convenient day for the assembling of the Legislature. He said he had come to the Convention with a fixed determination not to vote for any alteration which did not appear manifestly proper and expedient, and he was glad to find that other members entertained the same sentiments. He was particularly pleased to hear the gentleman who offered the resolutions for appointing the various committees, (Mr. PRESCOTT) say, that we should approach the

constitution with a cautious hand; that we should abstain wherever the advantage of any alteration was doubtful. Mr. PICKMAN gave reasons why the first Wednesday in January should not be the commencement of the political year. In the first place, it was important that there should be a full attendance of the members of the Legislature when the government was to be organized. This would frequently be prevented by the inclemency of the season. The first business of the Legislature would be to fill vacancies in the senate; but if the vacancies should be filled before the members were generally arrived, persons might be elected into the senate contrary to the general sense of the Legislature. Another reason: if the first Wednesday of January is fixed upon, the time for the elections must be altered. The State elections and the elections for officers of the General Government, would come near together and produce great excitement. It was important to keep the two governments as distinct as possible. Their objects were very different, and it was better to have the elections distinct. That great mistakes and confusion would arise from amalgamating them, as he had reason to know had lately been the case with respect to the election of electors of the President of the United States. Further, all the charitable, religious and literary institutions hold their anniversary at the time of the general election in May. The meeting of the Legislature reflects honor on them, and they in turn reflect honor on the meeting of the Legislature. He mentioned in particular the Massachusetts Congregational Charitable Society, and expatiated on the benevolent operations of that institution. All this would be done away, as it would be very inconvenient and unpleasant for these institutions to celebrate their anniversaries in January, and they would be more likely to fall into decay. There were other reasons. The last week in May had, by ancient usage, become, as it were, sacred, as a jubilee. It was emphatically the people's week. Persons from all quarters flocked to the metropolis, and mixed in social intercourse. On the score of economy, it was better for the Legislature to meet in May, when the days were longer. More business could be done with greater comfort; and since the separation of Maine, the travelling expenses of the Legislature were much reduced. A great part of the business of the May session was of a private nature—private petitions and remonstrances—orders of notice on these petitions, &c. These things being disposed of at the May session, gave the Legislature more time to attend to subjects of importance of a more general nature, at the winter session. He therefore hoped the resolution would not pass.

Mr. ADAMS of Quincy rose and inquired whether it would not be competent to take the sense of the committee so far as it went to decide on that part of the report which proposed no alteration, and leave the other part undecided.

In answer to an inquiry whether this course would be in order, the chairman replied that it was not in the regular order of proceed-

ings, but there could be no objection to the course if it appeared to be the unanimous wish of the committee.

Mr. STORV of Salem said he was sorry to object to the course proposed, but he had a proposition which he considered it his duty to make, from which he should be precluded if the course were adopted. The motion consequently was not put.

Mr. FOSTER of Littleton had long been of opinion, that one session of the General Court was sufficient for the year, and he was not satisfied with the reasons which had been given against the proposed change. May, he said, was one of the most busy seasons of the year, and it continued to be busy until the harvest was gathered in. If we retain the ancient time for the stated meeting of the Legislature, there would still be two sessions. Members would not have patience to finish the public business at that busy season. It had been the practice in past years to travel over the distance from their homes to the capital twice—to get together in May and separate, leaving the greater part of the business for another session in January. It would be a great convenience to all to come together at the latter season for the first and only time. The travelling was not often so bad as to make it difficult. The several societies which hold their anniversaries at the time of the general election will follow the Legislature; the charitable contributions will not be lessened and may be augmented. There would be a great saving in the travelling fees of members, and he thought the change ought to take place.

Mr. SALTONSTALL of Salem said that the attention he had been able to give the subject had brought him to the same conclusion with his respected friend and colleague, that they ought not to adopt the resolution. The amendment under consideration was not one of the most important that might probably come before the Convention, but every proposition for alteration in an instrument so solemn as a constitution which had stood the test of experience so well as ours was important. It demanded the most serious consideration and ought not to be adopted unless for very strong reasons. Such reasons had not occurred to him in sufficient force to convince him of the expediency of the present amendment. If he could see that it would tend to lessen the evils of too much legislation or in a great degree to lessen expense, he would not oppose it. It will not lessen legislation. A great part of the business of our Legislature is now rather of a private than a public nature. Let us look at the course of it. It is now almost invariably the practice, it is indeed an established rule, to pass orders of notice in all these cases; with a very few exceptions; they are made returnable at the next session of the General Court. No act would pass unless an order of notice had been issued, nor except in especial cases, unless the order is returnable at a subsequent session. He would appeal to gentlemen of experience in our Legislature, to the members of the standing committees, if many of those projects do not expire between the sessions. Nothing more is heard of them. The passions have had time to cool.

What will be the effect of the proposed alteration in business of this kind? If there is but one session a year, orders will be returnable at the same session at which they are presented. The interest of the parties will be kept alive. The passions will continue excited, their ardor will have no time to abate. Or perhaps a rule will be adopted like that in New York, of giving previous notice a few days or weeks before the session of the Legislature, and then the parties will come, all armed and eager for the contest, the business of legislation will be conducted amidst great excitement, and will not be so correctly done. As to public laws the same reasons will apply and with at least equal force. No one at all acquainted with the subject can deny the great, the infinite evil of perpetually increasing, perpetually varying laws. Nothing is fixed, nothing settled. Scarcely anything is left for the test of experience. A law scarcely remains long enough to receive a practical construction. But is it certain the evil would be remedied by the proposed alteration in the constitution? If so, said Mr. Saltonstall, attached as I am to the old order of things, fondly as I would cling to the few remaining institutions in Massachusetts, I would support it. But he would look again at the order of legislation. Now, most important subjects are referred from one session to the next. It is seldom that an important public law passes the same session in which it is proposed. It is postponed to the close of the session, and then, almost of course, it is referred to the next. In the mean time it is published, and at the next session public opinion is found against it, or the plan is abandoned by its author. But if this alteration takes place what will be the course? Will the new projects for improvement be referred? Who that is acquainted with the benevolent ardor of our reformers can believe that? Great attempts will be made to carry them through at the single session, and laws will thus often pass, which otherwise would not. The saving of expense, if any, will be inconsiderable, probably not more than the travel of members to the Legislature. The principal business now done at the summer session is the organization of the government, and this must be done at some time or other. If there is but one session in the year, it must occupy as much or more of the time of that session; the days will be much shorter and much less business will be done in a day. The session will be much longer than heretofore. The summer session now seldom exceeds a fortnight, and I need not say that a fortnight added to the single session would be the same expense to the government, except for the travel of the members, which is inconsiderable. The change is not required by the change of circumstances of the Commonwealth. It is true that many of the most important subjects are committed to the general government, but much still is left to us, all except subjects of a public and national concern. Still almost everything we see or feel in life—the subjects that interest us—our daily concerns—the regulation of our contracts, depend on the government of the Commonwealth. He said the reason given by the committee for a change, that so many important subjects are transferred to the general gov-

ernment, did not sound pleasantly to his ears—it should not be heard from Massachusetts men—there was tendency enough to lessen our consequence, he thought. Without our aid, everything around and about us is tending to reduce the Commonwealth to a mere corporation—to destroy all the monuments of its separate existence. Let us not, said he, aid this influence; let us not with our own hands make a path for the torrent that threatens to overwhelm us, but rather erect mounds and securities against it. It was indeed true, that a large portion of the Commonwealth was severed from us, but we should recollect how much that which is left is increased in importance—how much it exceeds in population, in commerce, in manufactures, in arts, in everything which calls for the interposition of the Legislature, the whole Commonwealth when the present constitution was adopted. It will destroy the only civil anniversary peculiar to Massachusetts. Are gentlemen, he asked, aware how ancient it is? That it was fixed in the first charter. (Here Mr. S. read from the charter of Charles I. 162, 7, 1627)—that the first general election was held on this spot nearly two centuries since, on the last Wednesday of May, 1630—that this has remained unchanged in all the changes of our condition? That it was left in the second charter—that it was continued through our existence as a colony—as a province; and was preserved after we became a free, sovereign and independent state, by the constitution. It is one of the oldest anniversaries in the country. Why then change it? Who that knows the power of association, the influence of habit, will doubt its importance. It is connected with everything memorable and interesting in our history. On this day the people of Massachusetts, from the beginning, have exercised their highest rights—they have quietly placed the rulers of their choice in power—the governor and magistrates of the last year have returned to private life, and those *newly chosen*, in the language of the first charter, have been raised to our high places. Destroy this anniversary and you will destroy everything that can remind us of the separate existence of Massachusetts. Another circumstance is, that we shall lose the principal holiday of Massachusetts. He hoped the suggestion was not beneath the dignity of this Convention. On this day all are free. It is a day of mirth and festivity. Some of our politicians have lamented that we had so few such days. Why then destroy this most ancient festival of our State? Who does not remember when he hailed the return of this anniversary with joy? On this occasion a large portion of the talents, learning and respectability of the Commonwealth are brought together at a delightful season of the year, upon this most delightful spot. The influence of this is very salutary. And he could not but repeat the observation that it is the anniversary convention of the clergy and of most of our religious and charitable societies, which do so much honor to our Commonwealth. Another and with him a sufficient reason against the alteration, was that it was not necessary. The meeting of the Legislature has been established for two centuries—why change it?

We know the practical effects of the present system, that it is good—we knew not the consequences of an alteration; it may seem to be unimportant, but why should we try the experiment? If there is one principle better settled than another, said Mr. S., it is, that an evil must be very great to justify a change in government. The reasons must amount almost to necessity. None such exist here. I believe a great majority of this Convention came here opposed to material changes, but there is no knowing how far we may go. One committee reports and the report is accepted; another report seems unimportant and that is accepted; and so we may go on until finally it will be thought expedient to take the constitution into a new draft as has already been suggested. I hope not, and that we shall make no alterations, except such as are necessary.

Mr. BLISS of Springfield thought the question an important one. It was a legislative question; not one about changing a holiday. Was it most convenient to have one session of the Legislature instead of two, and to hold that session in January instead of May? This was the real question? And gentlemen wandered when they connected it with the other subject, upon which they had been expatiating. He hoped the alteration proposed would be adopted. It would produce a great saving of expense. This was an important reason, but it was not the only reason. It would be more convenient with a great proportion of the population. It would ensure a more general attendance of the members of the Legislature, who would not be so likely to be detained at home or to desert the business of the session, to attend to their private concerns, as they would if the Legislature assembled in May; and it would prevent a great evil, which had been witnessed, of legislation going on in the summer session—important acts passing—when not a single member was present from any town west of the county of Worcester. The gentlemen from Salem might attend as well at one season as at another; it was not so with members living at a great distance. But if the session should be held in January, no undue advantage could be taken of the absence of members, as then all would have it in their power to attend. These reasons were imperious; if gentlemen thought a holiday necessary, let them have one in January; though a May pole might not be so proper in that month, yet they might find some other Popish superstition which would answer equally well. There were amusements suitable for January or February as well as for May. Or if necessary, they might continue to keep their holiday in May; there would be no difficulty however, in the various institutions altering their anniversary. Mr. B. concluded by recapitulating the arguments he had urged in favor of the alteration proposed.

Mr. ABBOT of Westford moved that the last Wednesday of October should be substituted for the first Wednesday of January. He thought that time more convenient in many respects; it would accommodate the agricultural interest very well, and the weather and travelling would be better in general. The travelling in January



was frequently bad, especially of late years. He confessed it was with difficulty that he could relinquish the festival of May; but as so much of the State had been taken off, he thought one session of the Legislature in each year would be sufficient, and he had therefore made up his mind to let the anniversary go.

Mr. LAWRENCE of Groton was opposed to the amendment of the resolution. He said there was the same objection to the month of October that there was to that of May. It was a season when persons engaged in agriculture would be as much occupied. He said that in fixing the time for the assembling of the Legislature, it was proper to consider other circumstances that are connected with it. He thought January would be a much more proper time, because it is necessary to have regard to the time when the elections are to take place. If the Legislature were to assemble in October, the annual elections must be had in September, a season which would be extremely inconvenient. This was a sufficient reason against the amendment. He thought that the month of January was the most suitable time for beginning the session. It would then be in the power of the Legislature to transact all the business of the year, and in the power of gentlemen from the country to give their attendance. This was not the case in June. He agreed with the gentleman from Springfield, that it was extremely inconvenient for members from the country to attend in June, and that they did not attend. If they were present at the organization of the government, they were under the necessity of getting leave of absence as soon as possible, and it was the duty of the Convention to adopt some more convenient time. The charitable societies might meet as well in January. The fountains of charity would not then be frozen up. The interest which the public feel in these institutions will not be destroyed, nor their effect impaired. The time of their assembling may as well be changed as that of the Legislature; the time of holding the commencement at the University in Cambridge had been changed from July to August, and no inconvenience had been experienced from the change. The anniversary was observed in the same way as it had been before. He would be the last to give his consent to any unnecessary innovations in our ancient institutions; but he was decidedly of opinion that the alteration proposed in this resolution, ought to take place, and that the motion for amendment should not prevail.

Mr. DANA wished to present for consideration the single question whether any change should be made in the time for the purpose of enabling the Legislature to transact the business of the year at a single session. He wished, therefore, that the resolution could be so amended by striking out that part of it which designated a particular day to be substituted, as to express only the expediency of adopting some different day from the present.

Mr. ABBOT withdrew his motion to amend, and Mr. Dana moved to amend the resolution by striking out that part of it which names the day to be substituted. This question being stated from the chair,

Mr. S. A. WELLS of Boston said his views on the subject were in full concurrence with those which had been expressed by the gentlemen from Salem. He thought no alteration should be made in the constitution, but such as were founded upon absolute necessity. If the day for the stated meeting of the Legislature were changed, other alterations would be rendered necessary.

The CHAIRMAN suggested that the debate should be confined to the question whether the resolution before the committee should be amended by striking out that part which names the time proposed to be substituted.

Mr. QUINCY stated that the resolution admitted of a division, and suggested that a division would be preferable to the amendment moved by the gentleman from Groton.

Mr. DANA then withdrew his motion, and Mr. Quincy called for a division of the question.

Mr. BLAKE of Boston inquired whether it was a question susceptible of a division under the rule, and intimated his opinion that it was not.

The CHAIRMAN stated the rule which declares the right to call for a division of a question where the sense will admit of it. The question whether the proposition admits of a division, is to be decided by the chair, subject to be confirmed or overruled by the house. The chairman decided that in the present case the resolution admitted of a division, and stated the question then before the committee to be, whether it was expedient to alter the time for the meeting of the Legislature.

Mr. STARKWEATHER of Worthington said he was in favor of the resolve reported. He was adverse to alterations generally, but he thought the people would expect one here. It was expensive and unnecessary to have a session in May. The usual course was for the Legislature only to organize itself and hear a few petitions at that session, and members living at a distance would ordinarily say it is needless for me to attend, there will be enough without me. It was true, things might be well done at this session, but they would not be the same things which would have been done if all the members had been present. It had generally been thought best to postpone the business of this session to the winter session, and the community, therefore, looked upon the May session as useless and expensive; and now the business of the Legislature would be so much diminished that it would have no more to do at the winter session, than it has hitherto had. He was going on to give reasons why the first Wednesday in January was the most proper time for the Legislature to assemble, but was informed from the chair, that the question of fixing the particular time was not before the committee.

The question was then taken whether it was proper to change the time, and carried in the affirmative.

The other part of the resolution, fixing the time, then came before the committee.

Mr. TILLINGHAST of Wrentham moved to amend by striking out

the first Wednesday in January, and inserting the first Wednesday in December.

Mr. PRINCE of Boston said he voted in the special committee in favor of a change of time, because he thought it would accommodate members of the Legislature from the country; he did not think those consequences would result from the change which were apprehended by the gentlemen from Salem. He had hoped that the gentlemen from the metropolis would have left it to those from the country to fix the time; and, if it was in order, he would move that a committee of one from each county—

The CHAIRMAN informed the gentleman they could not appoint any committees, being only a committee themselves.

Mr. QUINCY wished that the question of amendment might be divided.

The CHAIRMAN replied that by the rules of the Convention this question could not be divided.

Mr. VARNUM thought that October would be a more convenient time than the one proposed by the amendment. The business of the country would be sufficiently completed.

Mr. BEACH of Gloucester moved that the committee should rise and report progress.

Mr. BOND of Boston hoped the motion would not prevail.

The question was taken whether the committee should rise, and carried in the negative.

Mr. L. LINCOLN of Worcester said there was but one sentiment in the county of Worcester on the question before the committee that January would be the most convenient time, on account of the arrangement of the terms of the courts of common pleas in that county, as also in Middlesex. In October, harvesting would hardly be done; even at this present time, much of the produce of the year remained ungathered.

The question was taken for substituting the first Wednesday in December, and decided in the negative.

A motion was then made to substitute the last Wednesday in October.

Mr. CHILDS of Pittsfield said the sentiments of Berkshire coincided with those expressed by the gentleman from Worcester. October, he said, would be in the midst of the autumnal harvest.

The question was taken for substituting the last Wednesday in October, and determined in the negative.

The question was then taken for adopting the first Wednesday of January, reported in the resolution, and was carried in the affirmative.

On motion of Mr. STORY, the committee rose, reported progress, and asked leave to sit again; which was granted.

The Convention then adjourned to Monday at 11 o'clock.

MONDAY, NOVEMBER 27.

The Convention was called to order at 11 o'clock, and the journal of Saturday was read.

The Convention then resolved itself into a committee of the whole upon the unfinished business of Saturday.

The committee took up the second resolution reported by the select committee upon the part of the constitution relating to the General Court, viz.:

*Resolved*, That the constitution ought to be amended, so as to render more certain the time in which the governor shall return any bill or resolve to which he may refuse his approbation, by adding to the second article of the first section these words:—"Unless the General Court by their adjournment shall prevent its return, in which case it shall not be a law."

Mr. DANA of Groton said the select committee were induced to report this resolution, in consequence of what took place in the year 1809 or 1810. A bill respecting state affairs was passed by both houses of the Legislature towards the close of the session, and sent to the governor for his approbation. After the adjournment of the Legislature, it was observed that this bill was not mentioned in the list of acts passed, but it was supposed that it had been approved of by the governor. At the next session, however, the bill was returned by the governor with his objections, and the house of representatives refused to act upon it, on the ground of its not being constitutionally before them, not having been returned within five days. It was no doubt the intention of the framers of the constitution, that the governor should examine the bills presented to him; for which purpose he was permitted to retain them five days. It was, however, customary to load the governor's table at the end of a session with bills and resolves, so that he had not time to give them such an examination as they ought to receive; and this had sometimes been a subject of complaint with the governor. Mr. D. did not mean to say that five days were too long or too short a time for the governor to retain a bill; it might sometimes be thought unreasonable for him to detain the Legislature five days, waiting for the return of a bill, when they were otherwise ready to adjourn. The governor, however, ought to have a reasonable time, and this time ought to be certain. There was an ambiguity in the constitution with respect to the five days mentioned in it. He had understood, indeed, that there had been a judicial construction, by which they were interpreted to mean five legislative days. He had not seen the grounds of this decision, and, therefore, had still some doubts as to the meaning of the phrase legislative days, whether they included or excluded Sundays; for in a time of great emergency during the revolution, the Legislature had held a session on Sunday, and circumstances may require the same to be done hereafter. He would, therefore, have the phraseology like that adopted in Connecticut—so many days exclusive of Sundays.

The question of adopting the resolutions was then taken and decided in the affirmative.

Mr. DANA moved to amend the report of the select committee by inserting, immediately after the preamble, the following resolve :

*Resolved*, That a legislative department formed by two branches, a senate and house of representatives, each having a negative upon the other, is most congenial to the interests, habits, and manners of this people, as well as most conformable to approved axioms of policy ; and that any alterations in the formation of the department is wholly unnecessary, and would be highly inexpedient.

This amendment was adopted, 291 to 6.

The report of the committee on the sixth resolution, embracing that part of the constitution which relates to the secretary, treasurer, &c., was taken up and read :

*Resolved*, That it is expedient to alter and amend the constitution of this Commonwealth, by striking out the words "notaries public and naval officers" in the first article of the fourth section of the second chapter of the second part.

Mr. WARD said the effect of the proposed alteration was so obvious that no effort would be necessary to explain it to the House, and he would not take up time by going fully into the reasons in support of it. The situation of the state at the time of the adoption of the constitution, was such that a naval officer was considered necessary, but at present the exclusive right of raising a revenue by a duty on imports is given to the government of the United States, and, consequently, no state officer of that description is necessary. None has been elected by the Legislature of this State, since the adoption of the Constitution of the United States. The committee had, therefore, thought the provision for the appointment of this officer should be struck out of the constitution. In relation to the appointment of notaries public by the two branches of the Legislature, there had been sufficient experience of the inconvenience of the mode of appointment, the delay and expense occasioned by it, and the impossibility of obtaining the information necessary for a judicious selection, to show that it was much better that they should be appointed in the same way as justices of the peace and other officers of government are appointed. The form in which the proposition should be stated in the resolution, was matter for consideration. He thought it ought to depend upon the form in which the amendments in general are to be made. If the constitution was to remain as at present, and the amendments, instead of being incorporated into the body of it, were to be appended, in the form in which the amendments are made to the constitution of the United States, which he thought would be the most proper mode, the resolution, perhaps, should have stated the proposed amendment in a different form. He doubted the power of the Convention, under the act under which they were sitting, to abolish the old constitution and proceed to form a new one as a substitute ; but it was their duty to preserve the trunk, and engraft upon it such alterations, if any, as they should think expedient, and to submit the specific alterations to the people, for their adoption or rejection. If the proposed alterations are not adopted, the constitution will stand as it did before. It might be proper that the amendment should stand as it was proposed by

the resolution. In declaring that certain words be struck out of the article, is understood merely that they remain inoperative ; but if it was intended that they should be literally struck out, the amendment could be stated in a better form.

Mr. BOND of Boston asked for information of the propriety of retaining the words "commissary general" in the constitution. He understood that, at present, no such officer was appointed by the two branches of the Legislature, and it was not probable that they would be required. If such an officer should at any time be required, it could be provided for by law, and in such case it might be thought expedient to give the appointment to the governor and council.

Mr. WARD said that it would be a useless labor to examine the whole constitution and determine whether a word was to be found that could be struck out. He did not know whether the office of commissary general was necessary—it might possibly become so, and therefore it was useful that there should be provision for it in the constitution—if it never became necessary, the provision for it was harmless. If the constitution were to be now wholly new modelled, it might, perhaps, be found that this provision was superfluous. But under present circumstances, he preferred letting it remain to spending time in debating whether it should be struck out.

Mr. AUSTIN of Charlestown thought it would be expedient to extend the time limiting the period of office of treasurer and receiver general. The person who filled the office was required to give up his time and attention ; and if he was faithful to his trust, he became, by several years' continuance in office, the best qualified for discharging its duties. He approved of the general principle of rotation in office ; but in relation to this office the principle he thought was less applicable than to most others, He should move to amend the article by substituting seven or eight years for *five*, the present limitation.

Mr. RUSSELL of Boston rose to a question of order. He said that the subject under consideration was the adoption of the resolution, reported by the committee, and the debate should be confined to the question of accepting that resolution.

The CHAIRMAN said that the whole report was referred to the committee and was under consideration. It might be best to take the sense of the committee upon the resolution which had been under discussion before proceeding to the consideration of other questions.

Mr. STORY of Salem rose to move an amendment to the resolution under consideration, by adding to it the words "commissary general" before notaries public. His reason for the amendment was short and would take up but little time. By the clause as it now stands, it was imperative that the General Court should appoint the officer named. He thought it was more fit that it should be left to the Legislature to decide whether the appointment, if rendered necessary, should be made by the governor and council, or by the Legislature. The appointment was not distinguishable in its nature from others which are now required to be made by the executive.

The governor, as the head of the military of the Commonwealth, must be better acquainted with the qualifications necessary for the office, and with the characters of candidates for it, than the members of the Legislature would be.

The council, from the nature of their duties, have an opportunity of acquiring the same sort of knowledge. He thought it therefore important that this officer, whenever required, should be appointed under the responsibility of the commander in chief. The office may become necessary when the Legislature are not in session; a vacancy may occur during the recess of the Legislature, and there may be an imperious necessity of the services of such an officer. It may happen that an extra session of the Legislature should be rendered necessary for the appointment of this officer, or that the appointment should be made nine or ten months after there is occasion for his services. There was another reason for objecting to this mode of appointment. The larger the body is by which appointments are made, the less is the responsibility that is felt in making the appointment. Where the appointment is left with the governor, he is necessarily responsible for it, but when made by the Legislature, the responsibility is so divided as not to be felt. Those who are acquainted with the manner of making appointments in convention of the two houses of the Legislature, know how extremely difficult it is to obtain the information necessary for acting with any discretion, and that it is a mode of appointment the least fitted of any that could be devised for giving satisfaction. Three fourths of the members of the Legislature cannot know anything about the qualifications of the candidate for the office. He saw no reason why this officer should be appointed in a different manner from the adjutant and quarter master generals. The Legislature would act under the want of personal responsibility inherent in large bodies; it would be most difficult for them to judge of the qualifications for the office, and in case of the breaking out of a war or insurrection it might be necessary to call them together for the purpose of making a single appointment.

Mr. WARD of Boston said he thought it was thrown upon those who would make any particular alteration in the constitution, to show that some evil now existed which would be removed by the proposed alteration. In regard to the appointment of notaries public, it was the general sentiment there was a great inconvenience in the present mode. But with respect to commissary general, he had heard of no objection from any quarter—no such officer had been appointed for many years, and no inconvenience had been felt. His principal objection to the alteration proposed, was an aversion to make any change where it was not necessary. He thought the proposed amendment unnecessary, but he was not very tenacious of his opinion.

Mr. BLAKE of Boston was opposed to the amendment for this general reason, that he was resolved to assent to no amendment the tendency of which should impair in any degree, the republican form

of this government. The commissary general was an officer of great importance and responsibility. He was entrusted with the disbursement of large sums of money, and was invested with extensive discretionary powers. There was to be observed in every letter of the constitution great caution in the distribution of the powers of government. The appointment even of notaries public, an office of comparatively little importance, was not left to the executive, but was granted to the two branches of the Legislature. Major-generals were also appointed by the Legislature, and he presumed that no alteration with respect to them would be proposed. Appointments to offices similar to this in the government of the United States, were not made by the executive alone, but required the consent of the senate. He was aware that the responsibility of the individuals who unite in making the appointment was diminished by their number,—but this argument, if it was of any weight, went too far; it might extend to all the duties of government. He would not advocate any change for which there was not shown to be some necessity.

Mr. DEARBORN of Roxbury said that in all governments, the commissary general was one of the general staff. Generals of armies have the appointment of their staff in all countries; they are responsible for their conduct, and for this reason should have the control over them. The adjutant and quarter master generals are in this State appointed by the commander in chief, and why the appointment of commissary generals was reserved to the Legislature, he said, was to him inexplicable. It had been said that the commissary general was entrusted with the expenditure of large sums of money—so was the adjutant general; one supplies arms and munitions of war, the other provisions, and the expenditure for the former object was greater than for the latter. The public are disposed to throw censure upon the commander in chief; and to take from him the means of reflecting glory on himself, and honor upon his country, would be dealing unjustly.

Mr. APTHORP of Boston was in favor of the resolution as it stood—he said if we were likely to be much in a state of war he should agree with the gentleman last speaking. But for a time of peace, the present provision was not objectionable. He thought it inexpedient to take away from the Legislature the appointment which might not be wanted—in time of war the office would be important. The commissary would have the control of large sums of money, and to give the appointment to the governor, might be imparting to him too great a proportion of power.

Mr. STURGIS of Boston said that striking out the clause did not necessarily give the power of appointment to the governor. It was not necessary to have any provision. If it was left out entirely, it would be competent for the Legislature to provide for the appointment of the officer, if they should see fit to establish the office.

Mr. HORT of Deerfield said that the law of the United States for the government of the militia did not provide for the appointment



of any such officer. He was in favor of striking out the words. If the United States government should require the appointment of such an officer, the Legislature could direct the mode of appointment.

The question was taken on adopting the amendment proposed by Mr. STORY, and passed in the affirmative.

The question being stated on adopting the resolution as amended,

Mr. PARKER (the President) inquired whether it had been considered that some further provision would be necessary in relation to the appointment of notaries than that proposed in the resolution. Taking away the power of appointment from the Legislature would not give it to the executive.

Mr. WARD said that the consequence would be inevitable, that a further amendment should be made in that part of the constitution which grants powers to the executive. But the committee who reported this resolution did not consider that part of the measure as coming within their particular province. But he presumed it would be provided for by the proper committee.

Mr. VARNUM of Dracut said that the committee who had under consideration that part of the constitution which relates to the powers and duties of the executive, and who had not yet reported, had taken this subject into consideration, and would report a proposition for giving the power of appointing notaries public to the executive.

Mr. PARKER suggested for the consideration of the committee, that in his opinion farther provision should be made for the duration of this office, and that the term of office should be the same as that of justice of the peace. The duties of the office were similar—some preparation for it was necessary, and he hoped that provision would be made for its continuance for the term of seven years, subject to removal for improper conduct.

Mr. WARD said that he had prepared a resolution for effecting this object, which he should take a proper opportunity of submitting for the consideration of the Convention.

The question on the adoption of the resolution was taken, and passed in the affirmative.

Mr. AUSTIN of Charlestown wished to have the constitution perfect, not only in substance, but likewise in logic, style and taste. He therefore moved that it be amended in the second chapter, fourth section, first article, by substituting "in joint body" for "in one room," so as to read, "The secretary, &c. shall be chosen annually by joint ballot of the senators and representatives *in joint body*." He proposed a further amendment by striking out all the subsequent part of the same article, considering it bad logic.

The gentleman was informed from the chair that his motion was irregular; that he might move to amend the report of the select committee by adding a resolution, but he could not move to amend the constitution.

The gentleman varied his motion accordingly.

Mr. L. LINCOLN of Worcester said he was opposed to the amendment; that he came to the Convention with the intention to

apply a strong hand to the weak parts of the constitution, but not to demolish the fabric. What could be the object of the gentleman from Charlestown?—merely to gratify a fastidious taste! It was chimerical to think of satisfying every member of that assembly in this respect. With regard to the clause which prevents the same person from being eligible more than five years successively as treasurer, in order that the Commonwealth might be assured, that the moneys remaining in the public treasury, upon the settlement and liquidation of accounts, were their property, he thought the logic was good enough. The people understood it; it had received a practical construction. It was one of the most useful features in the constitution. The treasurer's office was one of high responsibility, and we had no security without a provision of this sort. We had had occasion to regret that the times for accounting were not more frequent. It was highly important that the public moneys should be counted from time to time. There should be some mode of ascertaining what money was in the treasury, and none could be better than requiring one treasurer to hand it over to a successor, who would be cautious for what sums he became responsible. If the office were continued for a longer number of years or for life, the treasurer would make out a fair statement on paper, while in fact the treasury might be bankrupt. Unless members came there with a fanciful desire for novelties, he trusted such alterations as the gentleman proposed would not prevail.

Mr. WARD expressed surprise that when we had such frequent examples of cashiers and other persons embezzling money, any member should have thought of proposing such an amendment. There was no other mode than the one contained in the constitution of calling people to account, so as to prevent evasion. If the treasurer were to continue, he would only have to borrow money of his friends, to show to the inspectors of his accounts, to be returned as soon as the examination is over. The term of five years was long enough. There was not such a dearth of talents and integrity among us that we could not find men suitable to fill the office of treasurer. Besides, by an intermission for one year, a treasurer became eligible again for five years more.

The question was taken upon Mr. Austin's motion and decided in the negative, but few voting in favor of it:

The committee then took up the report of the select committee on the part of the constitution which relates to delegates to Congress.

The question before the committee was upon the following resolve, viz.:

*Resolved*, That the fourth chapter of the second part of the constitution of this Commonwealth, having become inapplicable to the existing condition of the State of Massachusetts, ought to be expunged therefrom.

Mr. AUSTIN of Boston said he agreed with the gentleman of the select committee in the reasons which they gave for expunging this chapter, but he was opposed to the resolution which they had reported, and wished to make an amendment.

Mr. AUSTIN then moved to amend the resolution reported by the committee on the eighth resolution, so as to provide that the representatives of this Commonwealth in the United States and the electors of president and vice president of the United States shall from time to time be chosen by the people, in such convenient districts as the Legislature shall *by law provide*, and that the Legislature of this Commonwealth shall be required, next after every apportionment of representatives by the Congress of the United States, to provide by law for dividing the Commonwealth into districts for the choice of not more than two representatives or electors in any one district, which law shall not be altered until after a new apportionment shall be made by the Congress of the United States.

A motion was made that the committee should rise; and after some debate was decided in the negative, 137 in favor—236 against.

The question on adopting the amendment was then taken and decided in the negative.

Mr. MORTON of Dorchester was opposed to having the whole chapter expunged, and he moved to amend the resolution by striking out the words "expunged therefrom," and inserting a provision that the chapter be so altered as to direct that the senators and representatives of this Commonwealth in the Congress of the United States, when duly chosen, shall have their commissions under the hand of the governor and the great seal of the Commonwealth, and attested by the Secretary.

Mr. PARKER asked if there was any necessity for such a provision—whether the senators and representatives are not already furnished with certificates of their election, which are satisfactory.

Mr. MORTON said his object was to retain the chapter in the constitution. His amendment proposed to require by a constitutional provision what is now done by law.

The question was taken on Mr. Morton's amendment and decided in the negative, 107 to 250.

Mr. QUINCY said that if the old constitution of 1780 was to be preserved, he could see no reason why the chapter should not remain. He should prefer retaining it although it was a dead letter.

Mr. PARKER said if the chapter was expunged, it would not be necessary to make a new draft of the constitution. The amendments would be printed at the end of the constitution as it now stands.

The question was taken on the resolution as reported by the committee, and carried in the affirmative.

The committee then rose, and reported that they had agreed to the resolutions reported by the select committee on that part of the constitution relating to the General Court, with an amendment—that they had agreed to the resolution reported by the select committee on that part of the constitution which relates to the choice of a Secretary, &c., with an amendment—and that they

had agreed to the resolution reported by the select committee on that part of the constitution relating to the choice of delegates to Congress without amendment.

On motion of Mr. FAY, it was ordered that the reports lie on the table.

Mr. RUSSELL of New Bedford had leave of absence on account of sickness in his family.

Adjourned.

TUESDAY, NOVEMBER 28.

The Convention met at ten o'clock, and after prayers by the Rev. Mr. Jenks, and the reading of yesterday's journal,

Mr. PICKMAN of Salem, from the committee on that part of the constitution relating to the lieutenant governor and council, made the following report :

The committee to whom was referred so much of the constitution of this Commonwealth as is contained in the second article of the second chapter of the second part, and respects the lieutenant governor; also so much as is contained in the third section of the same chapter, and respects the council and the same manner of settling elections by the Legislature, to take into consideration the expediency and propriety of making any, and if any, what alterations and amendments therein, and report thereon; having attended to the duty assigned them, respectfully report—that in their opinion, these branches of the Government, to which their attention has been called, have been found to answer the important purposes for which they were established. The committee therefore do not think it expedient to recommend any essential alterations therein. The amendments which they have agreed to propose are such as appear to them to be adapted to the present state of the Commonwealth; to what seems to have become an established practice, that of finally electing the council from among the people at large; and to meet what may be the ultimate decisions of the Convention respecting the religious test, and the commencement of the political year. With these observations the committee respectfully submit the following resolutions to the consideration of the Convention.

BENJAMIN PICKMAN, *Chairman.*

1. *Resolved*, That it is expedient and proper to alter and amend the constitution of this Commonwealth by striking out, in the first article of the second section of the second chapter thereof, relating to the lieutenant governor, the following words —“in point of religion, property and residence in the Commonwealth.”

2. That it is expedient and proper to amend the same by striking out in the first article of the third section and the same chapter relating to the council, &c. the word “nine” and inserting “seven,” also the word “five” and inserting “four.”

3. That it is expedient and proper to amend the same by striking out the whole of the second article of the same section and inserting, “Seven counsellors shall be annually chosen from among the people at large on the ——— day of ———, by the joint ballot of the senators and representatives assembled in one room.”

4. That it is expedient and proper to amend the same by striking out in the fourth article of the same section the word “two” and inserting “one,” also the word “district” and inserting “county.”

5. That it is expedient and proper to amend the same by striking out in the seventh article of the same section the words “the last Wednesday in May,” and inserting the ——— day of ———.”

This report having been read was referred to a committee of the whole, and made the order of the day for to-morrow at eleven o'clock.

The report of the select committee yesterday acted upon in committee of the whole were then taken up. The amendments agreed to in committee were adopted by the Convention. The resolves were then severally read a first time and ordered for the second reading to-morrow at ten o'clock.

MR. AUSTIN of Boston said, that yesterday, in committee of the whole, he offered an amendment to the report of the select committee, which was not received. He then declined to press the proposition, and he now rose to renew it with a trifling variation. He therefore offered the following resolution :

*Resolved*, That the constitution ought to be so amended as to provide that the representatives of this Commonwealth in the Congress of the United States and so many of the electors of president and vice president as are equal to the number of the representatives aforesaid, shall be chosen by the people in such convenient districts as the Legislature shall direct ; and the Legislature of this Commonwealth shall be required at their session next after every apportionment of representatives by the Congress of the United States to provide by law, by dividing the Commonwealth into districts, for the choice of not more than two representatives or electors in any one district, and such law shall not be repealed or altered until after a new apportionment of representatives by the Congress of the United States.

MR. AUSTIN said that the proposition was one of great importance in principle, and whether it should be adopted or not was a question which required deliberate attention. The object of it was to decide finally an important question which was continually occurring in the Legislature. All other elections except those embraced in this proposition were fixed by permanent laws, while these, every time they came round, gave rise to discussion and to some degree of embarrassment and confusion. He first considered the question in relation to our own constitution. Gentlemen had expressed a reluctance to change any part of the constitution. He regarded it with as much respect and affection as any one—but he did not think it too sacred to be touched. It was not like the ark of the covenant which he that touched should die. The question whether it should be touched had been settled by the people. They had said it might require amendment, and had for that purpose chosen delegates to examine it. It was their duty to examine it to see what was sound, and what was unsound, and to take away every rotten plank in the ship. Some gentlemen had expressed a reluctance to reject even the decayed parts. He was not under the influence of any such feelings. The old landmarks, where our borders were enlarged, were of little consequence except as matters of curiosity to the antiquary. He would in all questions in relation to the constitution imitate the spirit of the enlightened men who framed it, act according to their best judgment of what was useful, and if new and important principles have been taught us by experience, it is our duty to put them into the constitution. He said that when he introduced his motion yesterday, it had been objected by the gentleman from Salem, (Mr. Justice STORR) that it was beyond the power of this Convention to adopt this regulation, because inconsistent with the constitution of the United States. He listened with great

attention to any suggestion from that very learned gentleman, and upon all questions of law he had been accustomed to regard his opinions with extreme respect. Whatever he said came with that authority that was apt to crush all opinions that came from a humble source. But the most learned judges may err. Mr. A. proceeded to examine the constitution of the United States, for the purpose of inquiring what the rights of the states under it were. In the second section of that instrument it is directed that the members of the house of representatives shall be chosen "by the people of the several states;" and in the fourth section, that "the times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof." No part of this power was proposed by his amendment to be taken away. The time of the election was still to be settled by the Legislature, as well as the place of election, whether by large districts meeting in a single place, as is the practice in some of the southern states, or in towns. The manner of holding the elections is also left to the Legislature to determine, and without such a law as by this proposition is required to be passed, the election could not be held. The proposition is only that we shall direct the Legislature in the exercise of the power which is given them by the constitution of the United States. The provision for the choice of electors of president and vice president is similar. The constitution requires that "each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, &c." The Legislature, if this proposition is adopted, will still exercise all the rights here given to it, in the manner in which they have been heretofore exercised. We only propose to limit them in the exercise of their discretion. Who can question the right of the people to instruct the Legislature in the manner of exercising their discretion. The Legislature are bound to exercise all their powers under the direction of the constitution. The people possess the supreme power—they have a right to impose this restriction upon the Legislature, and the Legislature will have no right to question their authority. The people have a right to instruct the members of their Legislature, and instructions given in a permanent instrument will be as binding as if given for each particular occasion. Congress would have no right to object to this limitation of the powers of the Legislature. The right of choosing electors is a state right, and Congress has nothing to do with it. This is not a new opinion. It is a principle that has been acted upon. He cited a case in which an electoral vote, which had produced great excitement, was remonstrated against; a remonstrance was not received by Congress on the ground that the right of choosing electors was a state right, and the remonstrance should have been made at home. It was impossible that Congress should refuse to receive the vote that should be given, on the ground of interference with the powers of the legislature in directing the manner of election. He therefore concluded that there was a perfect authority in the Commonwealth to direct, in their constitution, how

the Legislature should proceed in fixing the time, place, and manner of choosing representatives and electors. Why then should it not be exercised? These were popular rights, and belonged to the people. They had a right to direct. The mode of election proposed was one which would give the sense of the country in small districts. Although the majority of the people must govern, the minority have rights which ought not to be trampled upon. When electors and representatives are chosen in large districts, the rights of the minority are destroyed. It is only by dividing the State into small portions that there can be a fair expression of public opinion. For obtaining uniformly this expression of opinion, he contended the people had a right to require the Legislature to divide the Commonwealth into small districts. In regard to electors there was a peculiar propriety in doing this. The election was sometimes a source of great irritation. For want of such a provision, the state of New York in 1788 lost her electoral vote, by a disagreement about the mode of election.

He referred also to the great agitation in 1801, when a decision on which the election of president was supposed to depend, was carried in the legislature of Pennsylvania by a single vote—to the election in this State in 1805 and in 1812, and contended that under the circumstances of those cases, which he stated, much difficulty and popular excitement would have been prevented by a permanent provision like that which he now proposed. It was said that in this election the State should have one voice. It was true it should have but one voice, if the people said so. It was always safe to trust the people. If they were unanimous in their opinion, the vote should be unanimous. When the venerable gentleman who was chosen the first president of the convention was candidate for the presidency, the electors of this State were chosen in districts, and yet their vote was unanimous. It was not a sufficient objection that other states might not adopt the mode of election. If it was good in the abstract it was a sufficient reason for our adopting it. It might be useful to us if other states did not adopt it. It would be useful for this State to set the example of adopting the best mode. It has been the course in this State to choose the representatives in districts. They ought always to be so chosen, and taken from different parts of the State. But propositions have been made to change the mode of election. He did not wish to see these propositions renewed. Important elections of themselves afforded grounds enough of excitement, without that which arose from a difference of opinion about the mode of election. The Commonwealth had been at times agitated by contending parties. There was now a calm—but the storm might burst out again. Let us take advantage of the favorable moment to settle an important principle. Let it be understood that representatives and electors are to be chosen by districts. When districts are settled, let it be for ten years. Let there be no room for suspicion that the mode of election is determined upon from party motives. For the reasons which he had given, he thought that the Convention had the right, and possessing the right, that it was expe-

dient to adopt the regulation which he had proposed. If he was not correct in his views, he had discharged a duty in acting according to his own sense of what was right and expedient in this case.

Mr. BLISS of Springfield inquired whether this were to be considered as an original proposition. He thought it should be so considered. If so, it should, by the rules of the Convention, be first discussed in committee of the whole.

The PRESIDENT said that the proposition was the same in substance with that proposed by the mover in committee of the whole yesterday, and as such might be renewed in Convention.

Mr. STORY of Salem said—that in rising to address the Convention, he had not the presumption to consider himself in any other character than that of a citizen and delegate—he had no right to claim and did not claim for himself any official authority, and his opinion could have and ought to have no other weight than that of one zealous for the public service and addressing the judgments of his fellow-citizens. Whatever his errors might be in another place, (and errors without doubt he had committed) they were not subject to revision here. Whatever errors he might here commit, he was sure will meet with indulgence, as the opinions of one, earnest at least to promote the public interest, and like the other members of the Convention, solicitous to perpetuate our public rights and liberties. When yesterday the learned and eloquent gentleman from Boston presented the proposition now before the Convention for consideration, he had supposed that it had not been examined with his usual deliberation. I find myself, said Mr. S. under a mistake; and his ingenious speech requires from me a defence of the doctrine which I then ventured to suggest. He was opposed to the amendment proposed by the gentleman, because it was contrary to the constitution of the United States; and if it were not so, he should deem its adoption wholly inexpedient. It was perfectly clear that the constitution of the United States was the supreme law of the land, and in terms it was so declared in the instrument itself. It was not within the legitimate power of the Legislature of this Commonwealth in its ordinary capacity, it was not within the legitimate power of this Convention, to violate any of the provisions of that constitution. We are bound to obey it, and should abstain from all exercise of authority which in any respect narrows or contracts the powers delegated in it by the people of the United States. The gentleman would not differ from him in respect to this doctrine. The question then was, whether we have a right to insert in our constitution a provision which controls or destroys a discretion, which may be, nay which must be exercised by the Legislature, in virtue of powers confided to it by the constitution of the United States. The fourth section of the first article of the constitution of the United States declares, “that the times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing sen-



ators." Here an express provision was made for the *manner* of choosing representatives by the state legislatures. They have an unlimited discretion in the subject. They may provide for an election in single districts, in districts sending more than one, or by a general ticket for the whole state. Here is a general discretion, a power of choice. What is the proposition on the table? It is to limit this discretion, to leave no choice to the Legislature, to compel representatives to be chosen in districts. In other words, to compel them to be chosen in a specific manner—excluding all others. Was not this plainly a violation of the constitution? Does it not affect to control the Legislature in the exercise of its legitimate powers? Does it not interfere with the superintending authority of Congress? The gentleman says and says truly, that the Legislature will probably follow the rule presented by his proposition, if it is adopted by the Convention and ratified by the people of the Commonwealth. This, said Mr. S. is precisely my objection to it. The members of the Legislature are under oath to support the constitution of the State. They are also under oath to support the constitution of the United States. Will it not be a violation of their oaths to bind themselves not to choose representatives in any manner that the constitution of the United States allows, except that stated in the gentleman's proposition, when they are satisfied that the public interest requires another manner of choice? They may bring their consciences into jeopardy by such proceedings. It would be a direct and manifest departure from their duty. Again, the second article and first section of the constitution of the United States provides, that "each state shall appoint, in such manner as the *legislature* thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in the Congress." Here a discretion as to the choice of electors is given to the Legislature. It is unlimited, yet the proposition before us goes directly to destroy this freedom of choice, and compels the Legislature to resign all manner of choice but one. It assumes a control over the Legislature which the constitution of the United States does not justify. It is bound to exercise its authority according to its own views of public policy and principle; and yet this proposition compels it to surrender all discretion. In my humble judgment, said Mr. S., and I speak with great deference for the Convention, it is a direct and palpable infringement of the constitutional provisions to which I have referred. He proceeded to consider the policy of the measure, even supposing it were constitutional. He was free to declare that his present opinion was, upon the best consideration he could give the subject, that a uniform manner of choosing representatives and electors by districts throughout the whole of the United States would be a great improvement in the national constitution. He perfectly concurred in the gentleman's reasoning on this subject; and if he held any station in which his voice could aid such a measure, he would most earnestly and zealously offer it. But, said he, the question now before us is not of this nature. It goes to limit

us to a particular mode of choice, leaving all the rest of the United States free to adopt any other. What would be the consequence of this measure? That on the most important occasions we might be deprived of all the influence to which our talents and character and numbers, justly entitle us. It has been my melancholy duty in other times to be a spectator in the national council of the evils of our domestic dissensions. We have had the misfortune to be placed there in a neutralized situation, our representatives being divided so nearly between the two great political parties, that we scarcely had the means of aiding or defeating any important measure. I love my native State, and shall never cease to feel a deep and affectionate interest in its public character until I cease to exist. The talents, the virtues, the sound education and practical habits of our citizens entitled them to an elevated rank and influence in directing the destinies of this nation. What can be more humiliating or mortifying than to see this influence lost by our divisions? The direct and necessary consequence of the measure now proposed is to perpetuate our own humiliation. Why does Virginia (I speak of her with respect,) why does Virginia choose her electors for president by a general ticket? Because she is determined that her electors shall move in a solid column in the direction of the majority of the state. If chosen in districts, as now proposed, her electors would be composed of persons of different political opinions. When New York chooses electors by a legislative appointment, is it not for precisely the same reason—to preserve her legitimate influence in the Union, and to mark her vote with the stamp of the majority? I do not say that this is the right method of choice. But it is one which the constitution authorizes, and it has been practised by various states in the Union, whenever the exigency of the times made its vote of importance in the elevation of a president. Why should we give up the same privilege? Upon retaining this right in the most ample manner, may depend the choice of a president. Yet we are now asked to bind ourselves to a mode of choice which would neutralize our votes and place us in the same situation as if we had no vote. It seems to me this is a sacrifice which we ought not to make; and that sound policy ought to induce us to yield up no privilege which the constitution of the United States secures to us. The gentleman suggests that the Congress of the United States have no right to inquire into the manner in which electors are chosen; and therefore that we may safely adopt the mode now prescribed. Sir, I doubt exceedingly this proposition in the latitude in which it is stated. I do not know that Congress have ever decided that they have no authority to inquire behind the returns made to them of the electors. Cases of fraud or of unconstitutional appointments of electors may arise, in which it might be fit and proper, and perhaps necessary for the public safety, to make this inquiry. The case alluded to by the gentleman from Boston, was not, I believe, a decision on this point. The question was not decided, because it was not necessary in that case; for whether the votes were counted or not, the choice of president would not have been altered.

Mr. WEBSTER wished to make one or two remarks before the gentleman who moved the amendment replied. Not to enter into the argument on the question of our *right* to make such a provision, there were two considerations on the *expediency* of it which had weight with him. The first was the general inexpediency of connecting the *state* constitution with provisions of the *national* constitution. He thought it tended to no good consequence, to undertake to regulate or enforce rights and duties arising under the general government, by other means than the powers of that government itself. He would wish that the constitution of the State should have as little connection with the constitution of the United States as possible. Some of the states have sometimes endeavored to come in aid of the general government, and to enforce its laws by their own laws. State statutes had been passed to compel compliance with statutes of Congress, and imposing penalties for the transgression of those statutes. This had been found to be very embarrassing, and, as he thought, mischievous; because its tendency was to mix up the two governments, and destroy the real essential distinction which exists between them. The true constitutional, harmonious movement of the two governments was as much interrupted by their *alliance* as by their *hostility*. They were ordained to move in different spheres, and when they came together, be it for the purpose of mutual harm, or mutual help, the system is deranged. Whatsoever was enjoined on the Legislature by the constitution of the United States, the Legislature was bound to perform:—and he thought it would not be well by a provision of *this* constitution, to regulate the *mode* in which the Legislature should exercise a power conferred on it by *another* constitution. The other consideration which pressed on his mind was this. He was in favor of a general system of districting, throughout the United States, for the choice of electors. He supposed the gentleman who moved this resolution held that to be desirable. But that could only be brought about by an amendment of the United States constitution. Such an amendment, it was well known, had been repeatedly proposed in Congress. It had, he believed, more than once passed by the constitutional majority in the senate. He hoped it would also pass the house of representatives. But he could think of nothing more likely to have an influence to prevent it than the adoption of this measure. The inducement which the representatives of one state in Congress have to give up the power, (and it was often an important power,) of giving an undivided vote and voice in the choice of president, was, that other states would give it up also. But if other states voluntarily restrained themselves, by their own constitutions, so that in fact they should have nothing to give up, the inducement was at an end. If every state in the Union, except two or three of the largest, were to bind themselves to choose electors by districts, and these two or three were at liberty to choose by general ticket, or to appoint by the Legislature, every one must see how far this would increase the actual and efficient power of those large states. In short, as far

as it is an object to possess power in the Union, it is the interest of every state, that every other state should be restrained to district elections of electors, and herself left free. When we, therefore, tie up our own hands in this particular, by our own constitution, we do that, precisely, which those who wish a relative increase of *their own power*, would desire. He was afraid, in so acting, we should not entitle ourselves to much character for foresight or sagacity. As political men, desirous of retaining only the just, but all the just right and power of our constituents, he thought we ought to retain the right of giving an undivided electoral vote, until others also should agree to give up the same right. Otherwise we should be making a mere gratuity of that, which was all we had to offer as an equivalent for a highly desirable object in return.

Mr. AUSTIN requested the indulgence of the House, to make a few remarks in reply to the gentleman who had opposed his motion. He admitted the inexpediency of attempting to aid the government of the United States. That government was strong enough to stand by its own force. The object of his motion was to arrange our own affairs. It was objected that we should take away an argument for the adoption of the principle generally throughout the United States. He did not concur in the justness of this remark. He said we should have a solid column of electors when we had a solid column of public opinion; when the opinion of the public was divided, it was not desirable that we should have. In other states there was either a violation of the rights of the minority, or their citizens were united by a strong force of interest or political feeling. He should regret the destroying our influence in the Union, but he would not force public opinion by violating the rights of the minority. He agreed that if we introduced a provision into our constitution, contradicting the provisions of the constitution of the United States, it would be of no validity. But the question was, whether the constitution of the United States would be violated by the amendment offered. If it were a proposition to give to the governor and council the power of regulating the elections, it would unquestionably be a violation, because the Federal constitution ordains that the Legislature shall direct as to the time, place and manner of holding the elections. By this proposition the Legislature will continue to direct. This amendment is only advisory of the manner in which the Legislature shall exercise its discretion. It is not necessary that the discretion should be unlimited, nor does the Federal constitution require it to be free from the influence contemplated in this amendment.

The question was then taken upon Mr. Austin's amendment, and decided in the negative. It was then ordered that the report of the committee should have a second reading to-morrow at 10 o'clock.

Mr. QUINCY moved to take up the resolution respecting the creating of a permanent fund, out of the lands of the Commonwealth in the state of Maine, for the support of public schools, reported by the committee on that part of the constitution which relates to the Uni-

versity of Cambridge, and the encouragement of literature; but it being suggested that some of the select committees were desirous of meeting, the motion was withdrawn.

The Convention then adjourned.

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WEDNESDAY, NOVEMBER 29.

The Convention was called to order at 10 o'clock, and attended prayers made by the Rev. Mr. Palfrey.

After the journal of yesterday was read, the resolution respecting the constitution of the Legislature by two branches, reported by the committee on that part of the constitution which relates to the General Court, was read a second time and passed. The second resolution, reported by the same committee, respecting the alteration of the time for the meeting of the Legislature from the last Wednesday in May to the first Wednesday in January, was read a second time.

Mr. QUINCY said; that the question was, for substituting a single session in January, for the two sessions which were required by the constitution; in other words, *it was an abrogation of the session in May*. It had been passed in a committee of the whole, by a considerable majority. He hoped that he should be pardoned in asking the House to review its decision. He knew that the resolution had the gentleman from Springfield, (Mr. BLISS) for its patron. He was sensible that gentleman had a great influence in that body, and justly from his great talents, long experience, and characteristic integrity. He requested of that gentleman to consider the weight which was due to the arguments which he should urge. He asked no more. A session in May was an institution of an antiquity of nearly two centuries. He thought the reasons for changing should be great and general, and grave. Three general reasons had been urged by the advocates for the resolution. 1st. The inconvenience to country gentlemen from the May session. 2d. The advantage which resulted, in point of influence, to those who dwelt in this vicinity, in consequence of the necessary absence of country members, at the end of that session. 3d. The economy resulting from having one session, instead of two. 1st. As to the inconvenience arising to country gentlemen, from their being obliged to quit their farms in May; it was certainly not excessive. It had been the practice of two centuries. There had been no grievous complaint. They had never been prevented attendance from any accidents of season or weather. From the first settlement of the country to this hour, the Legislature had been full to the brim. This was an all important fact. It was the period at which the government was organized. Full houses, in both branches, at the time of first organizing the departments, had always been secured. This was the important time, more important than any subsequent period of the session. Because it evidences that, at this season, there is a certainty of organizing the government, according to the existing majority in

the Commonwealth, however that majority was constituted. As to the effect on the farming interests, we have the experience of two centuries; during all which the practice had been uniform; and the prosperous state of our Commonwealth was proverbial. Now although some inconvenience did exist, he submitted it to the good sense of the Convention to consider, whether it was sufficient, in itself considered, to justify so great an alteration in the constitution and the habits of our ancestors. The second reason urged was, that it gave an undue advantage to those situated in the vicinity of the place where the Legislature was holden. If this was true, and this was a remedy, he granted that it was a good reason. The fact on which the objection was founded, he understood to be stated thus: "The country gentlemen from a distance go home, towards the end of the May session, and leave the decision of the business of the State to the gentlemen situated in this immediate vicinity." Now, if this is a fact, it is a melancholy one. But if it be a fact, is this the remedy? Is it necessary therefore to amend the constitution. He put it to the sense of the Convention to decide. Is it not absolutely within the power of the Legislature to remedy that evil? 1st. By compelling the attendance of members. 2d. By an adjournment before the mischief occurs. 3d. By general rules and orders of both, or either branch, bringing the business within the time, in which distant members could attend. Now he asked, will it be seriously urged that this constitution shall be amended for the purpose of remedying an evil, absolutely and uncontrollably already within the ordinary powers of every legislative body? But is it a fact? Can any gentleman put his finger upon one act of state consequence; any great measure effected by the influences of this vicinity, in consequence of the absence of country members? That such may have happened, in relation to matters of local concern, in cases of banks, turnpikes, bridges, and the like, he thought was very probable. But he asked, on this account, ought we to alter the constitution, when the whole subject is now actually within legislative control?

Grant, however, that all the suggestions thus far made are true; grant, for sake of argument, that the May session does give undue advantage; that this advantage has been abused; that this abuse is great enough to justify an amendment to the constitution; the question results, is the measure proposed a remedy for that evil?

He said that he had heard the arguments on this subject with astonishment. For if he had any power of perception concerning consequences, the interest of the gentlemen residing in the country was directly the other way. The most important moment of time during the whole session was that, on which the government was organized; because on that depended the political character of the State for the year. Now the question was, at which time of the year could the gentlemen from the country attend with the most convenience and certainty. In May, when the season was settled and the communication certain? Or in January, when the roads

were liable to be suddenly obstructed? He put it to the experience of gentlemen, whether at the season proposed, a snow storm, of the ancient violence and depth, might not change the whole political power of the State. It is only rendering the roads for three days impassable, at the moment preceding the session, and the business is done. By an accident of this kind, concurring with a contested election, the whole political character of the Commonwealth might be changed for twenty years. At the May session there was liability to no accident. He did not consider this a local question. The influence and weight of the inhabitants of the west and east, in all questions of state, were the right of those in the centre of the Commonwealth, and he objected to the clause on this ground, that it tended to deprive this part of the Commonwealth of their assistance, as it might be, in a case of extreme difficulty. He thought, in the practicability of the meeting of the whole Legislature in May, the wisdom of our ancestors in this provision of the constitution was apparent.

The third reason given was that of economy. This was a high consideration to men in all relations. But he thought it was rather an affair of detail, than a rule to regulate the principles of a constitution. It was a consideration by which the organs of a government are to be guided after they are formed; not a principle in relation to which they ought to be constructed and to be compelled to act. It was among the first considerations of law-makers. It was among the last of constitution makers, or menders. The reason is that in making a constitution we are regulating the principles by which the Legislature is to maintain our rights and liberties. If, in establishing the organization of that Legislature, we make mere economy the rule, we may limit or embarrass powers which may be necessary to our defence, and thus endanger objects, infinitely more important than any amount of property whatsoever.

But what is this expense? It is scarcely more, probably not more, than the travelling expenses of one session. The week spent in organizing the government in June, will be saved in January. The work done in the first, will also be saved, to the last session. In this connection he noticed the effect of having but one session in the year, in relation to that influence of this vicinity, of which gentlemen were so apprehensive. The May session gives opportunity to issue notices for private business, and enables the Legislature in January to enter upon business early. But if such notices are not issued until January, time must be given, and all the business thrown into the last weeks, when members from a distance are always likely to be absent; and thus the evil of local advantage increased, instead of remedied. He submitted it to the Convention if, after this examination, either the arguments from inconvenience, from undue advantage, or from economy, were sufficient to justify any important change in the constitution, much more such a change as the measure now proposed was about to produce; *a change in a great institution established by our ancestors, at the first settlement*

*of our country.* He said that he knew what he was about to say might be treated with sneers and ridicule. He trusted, however, to the candor of the Convention. The argument of the two gentlemen from Salem, Mr. PICKMAN and Mr. SALTONSTALL, had been so met yesterday. It was a testimony to the strength of those gentlemen's arguments, speaking concerning whom he said that he spoke the sentiments of every man who knew them, when he said that for an union of sound heads, with sound hearts, they were inferior to none, and equal to any in the Commonwealth.

He asked what was the nature of the institution to which he alluded? It is this: The Legislature of the colony and of the Commonwealth have been accustomed to meet for two centuries on the first week of May; and in consequence of the singular character of our ancestors, who were not a vagrant class, but associated their principles of civil and religious liberty with elevated notions of learning and intellectual improvement, it became a custom for all the literary, the religious, and the charitable institutions of our country, which were of a general and state character, to meet on the week of the meeting of our Legislature. Accordingly, on this week, from the earliest period, all the clergy, the learned, the pious, and the charitable men of our country, made it a custom, as far as it was individually convenient, to meet on that week. The representation of this great and most respectable body of men, was always numerous. And for what purpose did they assemble? To settle the concerns of their respective corporations, whose influence and action were co-extensive with the State—to commune with each other on their respective concerns—to have intercourse with the fathers of the State—to receive and reciprocate light and information—to go together to the temples of the Most High, there to join in expressions of praise for mercies, and to supplicate his blessings on the coming political year.

Are such institutions to be spurned; are they to be slighted; are the feelings which would preserve them to be sneered at and ridiculed? If the State were destitute of them, all the riches in the universe could not replace such an Institution, supply and originate such habits; and yet we are about to throw them away like common dust?

The gentleman from Springfield (Mr. BLISS,) intimates that these societies may have their meetings in January. Mr. Q. said he should think this almost an insult, if he did not know that the gentleman from S. was incapable of an insult. He asked—would our clergy, our hoary-headed literati, our veteran statesmen, leave their homes for pleasure and general intercourse, at the most uncertain and inclement season of the year? He said that they might as well take the warm and glowing sun of May from the sign in which he predominates at that season, and place him in the sign which rules the inverted year; as well take the flowers and green surface of June, and spread them as a carpet in January, as transfer the institutions of the former period to those of the latter. It could not be



done. Nature is against it. This resolution annihilates the whole institution. And what do you annihilate? An unmeaning ceremony? An useless pageantry? No—but a substantial, moral, and intellectual and political blessing; such as no other State does possess; characteristic of our ancestors; their glory; associated with all our prosperity, political, social, and literary, and cause of much of it.

Mr. Q. asked if ever there was an institution in the world better calculated to keep alive these sympathies, to make learning, religion and good morals honored, and become the foundation of society; and so constituted as to have chief effect on the political birth-day of the State—making a holiday over the whole State, and a jubilee for the metropolis.

He said that he wished that the venerable gentleman on the right of the chair, (Mr. ADAMS,) to whom nature had left at the age of eighty-six years, the unabated vigor of his intellect, had also been permitted to have retained the unabated power of his ancient eloquence and voice. He wished that every gentleman in the Convention could have heard him say, as he had yesterday, that gentlemen did not realize the consequences of the measure.

(Here Mr. BLAKE interrupted Mr. Q., and called him to order—that it was not in order for one gentleman to state what another had said.)

Mr. Q. said he had no authority to repeat what the venerable gentleman had said, but presumed, as he was present, it was in order.

The Chair decided that Mr. Q. was not in order.

Mr. Q. said, that although he differed from the Chair, in point of order, yet that he had too great respect for the gentleman who filled it, to appeal—and that he had finished all the general observations he intended to make.

Mr. SLOCUM of Dartmouth said that he rose with great coolness and little animation on this occasion. While the gentleman from Boston was speaking, he sometimes threw a mist before him, and he (Mr. S.) sometimes thought he should vote with that gentleman. But the mist was now dissipated, and he could see the interest of his constituents. The gentleman dealt in Maypoles and flowers, and he was willing he should have them, but he should have them on his own territories, and not at the expense of the State. The question was, whether it was best to have two sessions or one. It would be a great saving to have but one. If the Legislature were not able to do the business in one session in a year, they might adjourn, and if there was a majority in favor of meeting in May, they might adjourn to that time. He hoped therefore that the resolution would pass.

Mr. FOSTER of Littleton said, that as a member of the Massachusetts Charitable Congregational Society, he would say a few words. The people of Massachusetts had shown a degree of kindness and hospitality not manifested by the people of any other State. He

wished to acknowledge it with gratitude. At the annual convention of the clergy, they always experienced the great munificence of the inhabitants of Boston. But he did not think that those who received this charity, would suffer from changing the time of the annual convention of the clergy from May to January. On the contrary, he thought they might get more money in the winter. It was a time when people in general had more to give.

Mr. PICKMAN of Salem inquired whether the present vote on the resolution was to be final, and being answered from the Chair that it was, he moved that when the question should be taken, it should be by yeas and nays. He was aware that it would take up some time, but he thought the final question on every considerable amendment, should be by yeas and nays. There were many modest gentlemen who refrained from speaking on questions, who would nevertheless wish that their constituents might know how they voted.

Mr. D. WEBSTER of Boston said he knew it was proper not to debate the question of taking the yeas and nays, but he rose to a point of order, in consequence of what fell from the Chair. He apprehended that all the amendments which should be adopted, would require to be put into the form of articles, and suggested that the gentleman from Salem would attain his object if the yeas and nays should be taken on the final adoption of those articles.

(The President explained—he meant that the vote was final on the resolution in its present shape.)

Mr. PICKMAN said that he only wished each member should have an opportunity of recording his vote at some time or other, and he withdrew his call for the yeas and nays.

Mr. QUINCY renewed it. He said that this vote decided the principle, and no gentleman on a subsequent vote, would wish to record his opinion in opposition to a principle which had already been finally settled by the Convention.

Mr. DANA agreed in the views which had been expressed by the gentleman last speaking.

Mr. DAWES of Boston said that he should have been astonished, but he remembered a rule of Dr. Franklin not to be astonished at anything—he was disappointed to hear the motion of the gentleman from Salem—he was pleased when he withdrew it—and it was with grief that he heard it renewed by his highly respected colleague. He said he considered it a question whether they should sit all winter, if this resolution and twenty others, were to be decided by yeas and nays. He said he did not like the rule that a fifth part of the members should be at liberty to demand the yeas and nays. It was holding a rod over gentlemen, and telling them "if you do not vote as I choose, your constituents shall know it."

The PRESIDENT said that the question of taking the vote by yeas and nays, should be decided without debate.

Mr. DAWES said, If I had known that, I would not have said a word.

Mr. QUINCY said that he did not wish to push the motion in opposition to the opinions of other gentlemen about him, and he withdrew it.

Mr. DANA then renewed the motion. The question was taken on the motion for taking the vote by yeas and nays, and carried.

The resolution was then read.

Mr. PRINCE of Boston said that he expected there would be conflicting interests in the House, and he wished to meet them in a spirit of conciliation. From the expression of opinion which had already been given on this question, he was satisfied that this resolution would meet the views of his brethren from the country, and he should for that reason give his vote in favor of it.

Mr. LITTLE of Newbury said that ever since the origin of the Commonwealth, the Legislature had met in May, and he had heard no complaint of it. If we were now to change, he wished it to be considered that it was because we were wiser than all our forefathers had been. But a single reason had been given in favor of it—it would save the expense of travelling. He proceeded to make some statements of the amount of expense in different sessions, within the last ten years. He thought it would be inconvenient to transact all the business at the winter session, and if they should have occasion to adjourn, they could not adjourn to a more convenient day than the last Wednesday in May. He had been a farmer for many years, and he knew that this was a season when business was least urgent.

Mr. WALKER of Templeton said that the only question was, whether the change would produce a saving of expense—all other considerations should be laid out of view. He considered the meeting in May as a mere ceremony, which could easily be dispensed with. He thought it a self-evident proposition.

Mr. PICKMAN thought it might be shown that expense would be saved by having two sessions instead of one. Every gentleman who had had any experience in the Legislature, must know that much time was taken up in organizing the government—it was not a mere ceremony—it was a duty imposed by the constitution itself. The days were so much longer, and the transaction of business so much easier, that one day in May was worth two in January for this purpose. He spoke from experience, and appealed to gentlemen who had been in the Legislature. To perform the same service, several days longer would be required in the winter than at the usual date of the summer session—and enough to make the whole difference of the expense of travelling. He suggested another argument against the change. This was but a part of a system. If the session of the Legislature was altered, the period of all elections must be altered. The gentleman from Springfield had told us that the people would attend to their private business, to the neglect of the public. What would be the consequence of transferring the business of the elections from the spring, a period of comparative leisure, to the autumn, when all are occupied. The

session also would be so prolonged, from having all the business of the year crowded into it, that it would extend into the spring, and gentlemen would have the same temptation to desert their duty, as in May.

Mr. LINCOLN of Worcester rose to make a single remark, and he would endeavor that what he should say, should be remarkable for its brevity, if it was not for its solidity, on this as well as on all other occasions. He considered the question important to the interests of the country, and he wished to express what he believed to be the sentiments not only of his constituents, but of other gentlemen in the same part of the State. He had hoped the gentleman from Springfield would have replied to the remarks of the gentleman from Boston. He would have done it in a manner more satisfactory than he (Mr. L.) was able to do it. He professed as much respect for the present constitution as any member of the Convention, but he was sorry to hear the expression of any sentiment that should sanction the opinion that no improvement could be made to correspond with the progress of society. The present constitution, at the time of its adoption, was but an experiment. The framers of it could not anticipate what would be the effect of every part of it. He thought that on this question there were imperative reasons for a change. He differed from the opinion expressed by the gentleman from Salem, that it would produce no saving of money. His reasoning was predicated on the supposition that much time would be necessary in organizing the government. It was true that heretofore much had been necessary. Time had been wastefully and uselessly expended in the legislative mockery of electing members of the council from the senate, merely to give them opportunity to decline. The houses had been employed day after day, in supplying the vacancies. All this time, he trusted, would now be saved. Whole days were occupied in choosing notaries public, in convention of the two houses, but he trusted that with the amendments which should be adopted, little time would be requisite for organizing the government. The argument of the gentleman was therefore without foundation, which otherwise would have been of great force. He proceeded to reply to the remarks of the gentleman from Boston, (Mr. QUINCY.) He had expressed a great regard for the interests of the country; he knew him too well to doubt that he was perfectly sincere in his remarks, but he could assure him, that the people from the country would have opportunity to attend to their own rights. Snow storms were not so dreadful as seemed to be imagined. The people were familiar with them, and they seldom prevented the passing from one end of the State to the other. He recollected but one instance when the travelling had been entirely obstructed by snow, which was in the year of the adoption of the constitution. But suppose it to happen more frequently, the argument is inconclusive, unless it can be shown that the roads may not be broken up by freshets in the spring—that there may not be earthquakes in May—that the bridges may not be carried off by floods.

He contended that it would be more convenient to assemble in January than in May. A great part of the members of the Legislature came from agricultural parts of the Commonwealth, where May and June are among the most busy months in the year. The seed is put into the ground as early as May; it soon requires weeding, and the first and second hoeing is hardly finished, before the gathering of the hay begins. Hay is begun to be cut in Hampshire county, as early as June; in Worcester, in June or the beginning of July. It is inconvenient for gentlemen engaged in these pursuits, to leave their homes to attend the General Court. It has resulted from these causes, that it has been indispensable in the spring session of the General Court, either to transact business in a thin house, or adjourn to the winter, when the agricultural business of the year is finished, and those who are engaged in these pursuits, are at leisure. As to the charitable institutions which hold their anniversary meetings at the time of election, if they were necessarily connected with the session of the Legislature, they might meet as well in January as in May. The snow which then covered the ground, served rather to facilitate than to impede travelling, and the members of the Legislature in coming to the capital, might bring with them their minister or other persons, with greater ease than at another season. But he did not think there was much force in this argument, on one side or the other. He placed the question on the ground of experience. He insisted that it was more convenient to have but one session, and to have that begin in January; and for this reason he should vote for the resolution.

The yeas and nays were then taken on the adoption of the resolution and it was decided in the affirmative—

Yeas 408. Nays—Messrs. Abbot, Adams John, Adams Josiah, Allyn, Andrews, Bartlett Wm., Bacon, Banister, Bond George, Bolyston, Blood, Cotton, Cleveland, Crawford, Crehore, Davis John, Estabrook, Frazer, Hale Nathan, Hall Nathaniel, Heard, Hoar Samuel, jr., Hooper, Hunewell Jonathan, jr., Jackson Joseph, Little Moses, Little Josiah, Morton Perez, Messenger, Noyes Nathan, Pierce Varney, Perley, Phillips Wm., Phillips John, Perham, Pickman, Quincy, Richardson James, Richardson Eli, jr., Russell Benjamin, Saunders, Saltonstall, Shillaber, Shaw, Sturgis, Storrs, Sullivan Richard, Taft, Tuckerman, Tilden Joseph, Thorndike, Ware, Wade Nathaniel, Ward, Wells Samuel A., Webster Redford—56. Absent 25.

The third resolution reported by the same committee, respecting the limitation of the time for the governor's returning bills and resolves sent to him by the Legislature for his approbation, was read a second time as amended in committee of the whole, and passed.

The resolution for striking out "commissary general, notaries public, and naval officers" in ch. 2, sect. 4, art. 1, reported by the committee on the part of the constitution which respects the secretary, &c., and amended in committee of the whole, was read a second time.

Mr. FAY of Cambridge observed that there was no provision in the constitution for supplying any vacancies which may happen, during the recess of the Legislature, in the offices of secretary and treasurer, and he wished therefore to amend the resolution, so as to provide that such vacancies should be supplied by the governor, with the advice and consent of the council. He said a law passed in 1792, authorizing the governor, with the advice of the council, to declare a vacancy in the office of treasurer, and to take proper steps for the security of the public papers and property until the Legislature should assemble. But the Legislature did not consider it competent to them to delegate their power to appoint a successor. A provision of the kind proposed was the more necessary, since it was contemplated to have but one session of the Legislature in a year. With respect to the secretary, a law was passed in 1813, authorizing his deputies to act in such a case. This was, in fact, enabling the secretary to appoint his successor; a proceeding which was contrary to the principles of our constitution.

The president doubted, on a point of order, the propriety of taking up a new subject which had not been debated in committee of the whole, and suggested that the proposed amendment should be referred to the select committee on the part of the constitution which respects the governor.

Mr. FAY said he was aware that it might be referred to that committee, or to a committee of the whole. He had had an intention of introducing the subject in the committee respecting the governor, as he happened to be one of the committee, but on further consideration he thought the proper place for the provision would be in the article respecting the secretary, &c. Upon a suggestion from Mr. WEBSTER of a proposition he intended to make, Mr. FAY withdrew his motion.

The question was then taken on passing the resolution, and decided in the affirmative.

The resolution reported by the committee on the part of the constitution respecting delegates to congress was then taken up.

Mr. MORTON of Dorchester renewed the motion he had made in committee of the whole to amend the resolution by striking out "expunged therefrom," and adding a provision that our senators and representatives in congress should be furnished with certificates under the hand of the governor, &c. He objected to striking out a whole chapter from the constitution, as the resolution proposes, and he doubted of the power of the Convention to do it under their authority to alter and amend only.

The question was taken on Mr. MORTON's amendment and lost.

Considerable debate arose upon the concluding words of the resolution, "expunged therefrom," and motions were successively made to substitute "annulled," and "become inoperative," and to lay the resolution upon the table; all of which were lost.

The question was then taken upon passing the resolution, and decided in the affirmative.

On motion of Mr. WEBSTER, it was ordered that the several com-

mittees appointed in pursuance of the various resolutions adopted on the 17th inst., be standing committees until the end of the session.

On motion of Mr. FAY, of Cambridge, it was then

*Resolved*, That the committee on so much of the constitution as relates to the secretary, treasurer, &c., be directed to consider the propriety and expediency of so altering the same, as that in case either of the offices within the appointment of the Legislature shall become vacant from any cause during the recess of the General Court, the governor, with the advice and consent of the council, under such regulations as may be prescribed by law, shall appoint and commission a fit and proper person to fill such vacant office, who shall perform the duties thereof until a successor shall be appointed by the General Court.

Mr. WEBSTER, from the committee on the 10th resolution passed on the 17th inst., submitted the following reports:

The committee to whom it was referred to consider whether any, and if any, what alterations or amendments it is proper and expedient to make in so much of the constitution as is contained in the sixth chapter of the second part, and respects oaths and subscriptions, &c., ask leave to report the following resolutions:

*Resolved*, That it is expedient so far to alter and amend the constitution, as to provide, that instead of all oaths, declarations and subscriptions now required, all persons chosen or appointed to any office, civil or military, under the government of this Commonwealth, shall, before they enter on the duties of their office, take and subscribe the following oath of allegiance, and oath of office, viz:

"I, A. B. do solemnly swear, that I will bear faith and true allegiance to the Commonwealth of Massachusetts, and will support the constitution thereof. *So help me God.*"

#### OATH OF OFFICE.

"I, A. B. do solemnly swear—that I will faithfully and impartially discharge and perform all the duties incumbent on me as — according to the best of my abilities and understanding, agreeably to the, rules and regulations of the constitution and the laws of this Commonwealth. *So help me God.*" *Provided*, that whenever any person, chosen or appointed as aforesaid, shall be of the denomination called Quakers, and shall decline taking said oaths, he shall make his affirmation in the foregoing form, omitting the word "*swear*" and inserting instead thereof the word "*affirm*," and omitting the words "*So help me God*" and subjoining instead thereof the words "*This I do under the pains and penalties of perjury.*"

2. *Resolved*, That it is proper and expedient further to amend the constitution, so as to provide that no judge of any court in this Commonwealth and no person holding an office under the authority of the United States, (postmasters excepted) shall at the same time hold the office of governor, lieutenant governor or counsellor, or have a seat in the senate or house of representatives of this Commonwealth, and that no judge of any court in this Commonwealth, the attorney general, solicitor general, clerk of any court, sheriff, treasurer or receiver general, register of probate, register of deeds, shall continue to hold his said office after being elected a member of the congress of the United States and accepting that trust; but the acceptance of that trust by any officer aforesaid shall be deemed and taken to be a resignation of his said office; and that judges of the courts of common pleas shall hold no other office under the government of this Commonwealth, the office of justice of the peace, and militia offices excepted.

3. *Resolved*, That it is proper and expedient further to alter and amend the constitution of this Commonwealth, so as to provide that if at any time hereafter any specific and particular amendment or amendments to the constitution be proposed in the General Court, and agreed to by two thirds of the members of each house, present and voting thereon; such proposed amendment or amendments shall be entered on the journals of the two houses, and referred to the General Court next to be chosen, and shall be published; and if in the General Court next to be chosen as aforesaid, the said proposed amendment or amendments shall be agreed to by two thirds of the members of each house present and voting thereon, then it shall be the duty of the General Court to submit such proposed amendment or amendments

to the people ; and if approved and ratified by a majority of the qualified voters, at meetings legally warned and holden for that purpose, the same shall become part of the constitution of this Commonwealth.

For the committee,

DANIEL WEBSTER.

The committee on so much of the constitution as is contained in the sixth chapter of the second part, and who were instructed to inquire into the expediency and propriety of so amending the constitution as to authorize the General Court to grant to towns, in certain cases, the powers and privileges of a city government, ask leave to report the following resolution :

*Resolved*, That it is proper to and expedient so far to amend the constitution, as to provide that the General Court shall have full power and authority to erect and constitute municipal or city governments in any corporate town or towns in this Commonwealth ; and to grant to the inhabitants thereof such powers, privileges and immunities not repugnant or contrary to this constitution, as the General Court shall deem expedient or necessary for the regulation and government thereof ; and to prescribe the manner of calling and holding public meetings of the inhabitants for the election of officers under the constitution : *Provided*, that no such government shall be erected or constituted in any town not containing — inhabitants ; nor unless it be with the consent and on the application of a majority of the voters of such town qualified to vote in town affairs.

For the committee,

DANIEL WEBSTER.

The committee on so much of the constitution as is contained in the sixth chapter of the second part, and who were instructed " to take into consideration the expediency of so amending the constitution as to insert therein a provision substituting affirmations for oaths in all cases whatsoever, where the party shall entertain religious scruples in regard to taking oaths," ask leave to report the following resolution :

*Resolved*, That it is not expedient to make any further provision by the constitution, relative to the substitution of affirmations for oaths.

For the committee,

DANIEL WEBSTER.

These reports were severally read, ordered to be printed, referred to a committee of the whole house, and made the order of the day for Friday, at 10 o'clock.

The House adjourned.

THURSDAY, NOVEMBER 30.

The Convention met according to adjournment, and attended prayers made by Rev. Mr. Palfrey. The journal of yesterday's proceedings was read.

Mr. JACKSON of Boston offered the following resolution :

*Resolved*, That a committee be appointed to consider in what manner such amendments in the present constitution of government of the Commonwealth, as may be made and proposed by this Convention, shall be submitted to the people for their ratification and adoption, and in what manner their votes thereon shall be returned, and the result ascertained.

He stated, that his object in making this motion, was to remove a difficulty which had frequently occurred in the course of the debate, from an uncertainty with respect to the form to which the amendments agreed to by the Convention should be reduced. For his part he had no doubt of the course proper to be pursued. He thought that they had no authority under the act under which they



were convened, to reduce the constitution to a new draft, and if they had the power, he should not think it proper to exercise it. In that case, when the amended constitution was submitted to the people, they would be obliged to accept, or reject the whole. He thought it the most proper mode to propose the several amendments distinctly, so that when submitted to the people, they may act upon each specific amendment, and adopt or reject them, according to their judgment of each. Otherwise they might reject the whole, on account of their objection to a particular article, and thus they would fail of their object, and all the labor of the Convention would be lost. He had thought that the subject might be referred to the chairmen of the several standing committees, but they had not yet all reported, and were therefore otherwise occupied. It would then be necessary to appoint a special committee for the purpose, and for that object he submitted the resolution.

The resolution was then read and adopted, and it was ordered that the committee should consist of five members :

The Hon. Judge JACKSON, of Boston ; Judge WILDE, of Newburyport ; Mr. L. LINCOLN, of Worcester ; WOODBRIDGE, of Stockbridge ; and HOLMES, of Rochester, were appointed.

Mr. PICKMAN of Salem, from the committee on the part of the constitution relating to the lieutenant governor and council, called up the report of that committee, which was on Tuesday referred to the committee of the whole, and made the order of the day for 11 o'clock yesterday. On his motion the Convention resolved itself into committee of the whole, on that report—Mr. VARNUM in the chair.

The report of the committee was read, and it was voted that the several resolutions recommended in it should be taken up for consideration in order.

The first resolution was then read as follows :

*Resolved*, That it is expedient and proper to alter and amend the constitution of this Commonwealth, by striking out in the first article of the second section of the second chapter thereof, relating to the lieutenant governor, the following words:—"In point of religion, property, and residence in the Commonwealth."

Mr. PICKMAN said it was his duty and right, as chairman of the committee which made the report under consideration, to explain the views which had led them to the adoption of the principles of their report. But in this case he was in the peculiar situation of being opposed to the resolution under consideration, which, as chairman, he had reported. The resolution was recommended by a bare majority of the committee, and after stating this fact, and that it was in opposition to his own sentiments, he should give an opportunity, to gentlemen of that majority, to explain their reasons in favor of it. As far as he understood the reason, it was that they were opposed to the requiring of any religious test as a qualification for the office of lieutenant governor.

Mr. BANGS of Worcester said the gentleman had misapprehended the reason which influenced the majority of the select committee in regard to this resolution. It was not because they wished

to show their disapprobation of a religious test that they were in favor of the resolution, but because they thought this amendment would meet the views of the Convention. The question respecting the test, it was supposed, would be determined more conveniently upon the report of the committee on the part of the constitution which respects oaths, &c. Mr. Bangs concluded by moving to postpone this resolution until the Convention had come to a decision upon that report.

This motion was agreed to, and the committee proceeded to the second resolution.

Mr. BANGS moved to amend the report by inserting a resolution that it is expedient to amend the constitution by making a provision in part 2, ch. 2, sec. 2, art. 2, that the lieutenant governor shall receive the same compensation as other members of the council, and no more, unless called to perform the duties of the governor when a vacancy shall take place in that office, in which case he shall have the same salary as the governor.

Mr. BLISS of Springfield wished, as the subject was new to a majority of the committee, that it might be postponed.

Mr. BANGS said he had no objection to that course.

Mr. PARKER (the President) said the question was a simple one, whether the lieutenant governor should have a salary or not. He thought it was unnecessary to have a postponement.

Mr. BANGS said he proposed the amendment in compliance with what he conceived to be the general wish of the people in the part of the State in which he resided. They thought that the office of lieutenant governor was unnecessary, under existing circumstances, and there was a general expectation that it would be abolished. For himself, he was in favor of retaining the office. It was founded by our ancestors; it added to the honor and dignity of the State; but the reason which had most weight with him, was the propriety of designating a successor to the chief magistrate in case of his decease. But the people were unwilling that the lieutenant governor should receive a salary for doing nothing. He has a compensation for his services as a counsellor; this was sufficient. By giving him a salary besides, the Legislature had established a sinecure, which was a monster in a republican government. The salary of five hundred dollars, he said, conferred no honor on the State—it was a pitiful sum. He would give nothing at all, or he would give a liberal salary. The sum however had nothing to do with his objections to the salary. It was the principle of a sinecure to which he was opposed. Giving a salary to the lieutenant governor was contrary to the principles and intention of the constitution. The constitution says the governor shall have a salary; it does not say so with respect to the lieutenant governor—and yet the Legislature annually grant him a salary. He had understood that the lieutenant governor used to have fees and perquisites, as Captain of the Castle; and when these were relinquished by the cession of the castle to the United States, the Legislature gave this

salary of five hundred dollars as an equivalent; but this was not intended by the constitution. It will be said we should not in the constitution, fix the precise sums for salaries. He was of the same opinion; but there was a great difference between fixing the amount of a salary and determining that there should be no salary at all. This amendment, he said, was not making any change in the constitution; it was only making more explicit what was already intended by that instrument. But what if it was a change? he came there to touch that instrument, not with a trembling hand, as some gentlemen seemed to have come. He would touch it with a cautious, but at the same time with a firm hand, and amputate such parts as were diseased.

Mr. PICKMAN thought this subject was not a proper one to be debated in that body. It had better be left to the Legislature to determine whether a salary should be allowed or not. The members of the Legislature as well as those of the Convention were chosen by the people and represented the people. The constitution should guard against such abuses as the Legislature would be under temptation to commit, but it should not be jealous of the Legislature. The two branches of that body were more suitable to discuss this subject, as they could frame their decisions according to the exigency of the times, and the Convention had better leave the power of deciding, where the constitution leaves it. Mr. P. did not agree with the gentleman from Worcester that this office was a sinecure. The lieutenant governor always kept himself ready to act in the council when wanted; it was not so with the other counsellors. He had also the more arduous task of presiding in the council in the absence of the governor; it was his duty to hold himself in readiness to supply a vacancy in the governor's office, and he was disqualified with respect to holding other offices.

Mr. SLOCUM of Dartmouth said, dignities and sound were a pleasing thing, but we ought not to give too much for them. He did not wish duty to be performed without compensation, but he was not satisfied that the duties of the lieutenant governor deserved greater compensation than his pay as a counsellor. Every body was glad at this opportunity for revising the constitution, because we could begin to economize, and there was no reason why we should not begin it at the head. The money to pay the salary of the lieutenant governor was to be drawn from the laboring part of the community, and he wished the office might be abolished as a useless one, but as that was not the question before the committee, he hoped the compensation to be allowed would be only as much as the compensation of a counsellor.

Mr. DUTTON. The amendment under consideration provides that the lieutenant governor shall have no salary, except during the time he acts as governor. I am opposed to the amendment. The only argument in favor of it is, that the office is a sinecure. I do not admit the fact. The lieutenant governor has high and important duties to discharge. In case of the death, or absence, or dis-

ability of the governor, he is to perform all the duties that pertain to the office of governor. It will be recollected, Sir, that the governor and lieutenant governor are the only officers who are elected by the whole people. This is a wise provision; and secures to the people a governor elected by themselves. It has been the practice of other states and of the United States, to establish an office second in rank and dignity to that of the chief magistrate, to be filled by some distinguished man, and elected with a view to his discharging the duties of chief magistrate in certain specified emergencies. Besides, sir, in consequence of his rank and dignity, he is put to an additional expense. It often happens, that he is obliged to do the honors of the Commonwealth, to notice strangers of distinction, and these civilities are attended with expense. Is it reasonable then, is it just, to clothe a man with an office, which subjects him to expense, without providing at least an indemnity. Sir, I believe the present lieutenant governor expends more than his whole salary in consequence of his office. But there is another objection to the amendment, which appears to me to be conclusive, and that is this:—it is a matter which belongs to the discretion of the Legislature. It ought to be left there, as the salaries of the other officers are. But this amendment goes to tie up the hands of all future Legislatures, and puts it forever out of their power to provide any compensation, under any circumstances, for the lieutenant governor. To insert such a provision as this, into our constitution, has to my mind an air of littleness, not altogether becoming the dignity of the Convention. I am aware, sir, that the amendment provides, that when he acts as governor he shall be paid as governor, that the State may be charged in account with so many months and days service, as governor. But, sir, these offices are too important and dignified to be dealt with in this way; and I trust we shall leave the subject where the constitution has left it—to the discretion of future Legislatures.

Mr. CHILDS of Pittsfield said he would not be deterred by the intimation of the gentleman from Boston of the *littleness* of this measure. He considered it a principle that they were to establish; that there should be no sinecures in the government. If the gentleman would define what was meant by a *sinecure*, and if the office of lieutenant governor was not a sinecure, he did not know how the word should be defined. He considered that office a sinecure, in which the incumbent rendered no services. He differed from the idea of the gentleman from Salem, that this was not a place to fix principles. He thought it was peculiarly the place to fix principles, and that the Legislature was not the place. By the constitution, the representation in the senate was proportioned to property, and that in the house of representatives to population. Were not these principles to be determined by the constitution, and not by the Legislature? I do hold that the office of lieutenant governor is a sinecure, and that we are called upon to fix the principle that no sinecure shall exist in the government. The antiquity of the office does not

prove that it is not a sinecure. He hoped that the question would be decided on principle, and he was for that reason in favor of the amendment.

Mr. AUSTIN of Charlestown said he was sorry the gentleman from Worcester had not made a different motion. He was not disposed to make a motion himself, after the lamentable fate which had attended the last one he made, but he hoped the gentleman would vary his motion so that the proposition should be to abolish the office of lieutenant governor; for if it was not a sinecure, it was at least a *quasi* sinecure. He should not vote for the gentleman's present motion. As the office was the second in the government, he should think it derogatory to request gentlemen to fill it for nothing. The present salary was not sufficient to support the courtesies which were expected from the incumbent. He did not mean to encourage pomp and splendor, which were contrary to the genius of our institutions, but men high in office were unavoidably exposed to additional expenses on account of their office. It would no doubt be useful to appoint a successor to the governor, and one might be found in the president of the senate.

Mr. BLAKE of Boston repeated the declaration which he had before made, that he would not assent to the change of a single feature of the constitution which should have a tendency to change its republican character. He was opposed to the present amendment because it was anti-republican. The office was necessary, for the case might occur, and had already occurred, when all the duties of chief magistrate would devolve upon the lieutenant governor. In such case it was proper, if the governor had any compensation, that the lieutenant governor should have it. These two offices come directly from the people. Some gentlemen would take away the choice from the people. They would have the office devolve upon a person chosen for another purpose, and in whose designation to perform the duties of chief magistrate the people would have no direct voice. The office was called a sinecure. Was it so? The lieutenant governor is a member of the council and president of that board. They are sometimes in session from month to month. Other members may be absent, but the lieutenant governor cannot, as presiding officer—he has greater responsibility. The proposed alteration was anti-republican, because if it prevailed none but a man of wealth could be lieutenant governor. He is often required to represent the executive of the Commonwealth. He is bound in the absence of the governor to receive strangers of distinction with the hospitality becoming the head of the Commonwealth. Who can perform these duties but a man of wealth or a man who has a compensation? By withdrawing the salary we pronounce that none but a man of opulence can fill the office. The performance of these duties is called mere show and pageantry. He asked if the framers of the constitution were men of pomp, show and pageantry; if the times in which the constitution was formed were suited for the indulgence of this disposition? If the office of lieutenant governor was important and

necessary at the time of the formation of the constitution, when the population of the Commonwealth was comparatively small, was it not much more so now? He referred to the example of the United States constitution, which requires a vice-president who has a permanent salary, and who is chosen not principally to act as president of the senate, but that there may be a person chosen by the majority of the people for the express purpose of acting as chief magistrate in case of necessity.

Mr. HOAR of Concord said that if gentlemen would review their argument in support of this motion he thought they would be satisfied that it was inconclusive. They state that the office is a sinecure, and if it is not, they do not understand the meaning of the term, and for this reason there ought to be no salary attached to it. But will they vote for an office which is a sinecure? Their argument is founded on the principle that there should be no sinecures, yet they vote for the office and object to the salary because the office is a sinecure. Mr. H. thought that if the principle on which this amendment was founded were to be pursued it would lead to an endless discussion. They should on the same principle restrict the Legislature in relation to every other office, and they should be engaged in digesting a fee bill for all the offices of the State. This would involve an inquiry into a thousand minute considerations which he was not willing to go into. If the office was a sinecure, which however he did not think, if it was of no use, it ought to be abolished. But this was not the question now before the committee.

Mr. APTHORP of Boston thought that upon the same principle on which we would prohibit the giving of a salary to the lieutenant governor we should limit the authority to give salaries to the treasurer, secretary and other officers. But this was a subject much better left to the wisdom and discretion of the Legislature. The lieutenant governor has important duties to perform, and it may happen that still more important duties shall devolve upon him. He is always bound to be in readiness to perform the duties of chief magistrate; he is placed under a restraint, and subjected to expenses, for which he ought to be in part compensated.

A member whose name we did not learn, disliked the amendment, because he thought the office unnecessary. To give time for the mover to substitute a resolution to abolish the office altogether he moved that the question be indefinitely postponed.

The CHAIRMAN said an indefinite postponement could not take place in committee—it must be in Convention—and it would then be a postponement of the whole subject.

Mr. DANA of Groton said he had thought the office had better be abolished, but the discussion had given him better views of the subject. He now thought it was proper that some person should be designated by the people to supply a vacancy in the chair of the chief magistrate. The whole council, or the president of the senate, or the oldest or youngest counsellor might be appointed by the constitution to succeed, but it would not be so convenient; as it would

be necessary to keep in mind at the elections, that the counsellors and senators should be qualified not only for those offices respectively, but likewise for the office of governor. He thought however that the constitution did not contemplate the lieutenant governor's having a salary. And this was to be deduced from contemporaneous construction, if that was of any force, for no salary had been attached to the office for several years after the adoption of the constitution.

Mr. HINCKLEY of Northampton mentioned a circumstance which had occurred under our present constitution, of the office of governor having once immediately after the election, devolved on the lieutenant governor, who administered it through the whole year. He thought gentlemen were blending two distinct questions. It was one question whether we should have a lieutenant governor, and another whether he should have any salary. The Legislature had always determined what were the pecuniary resources of the state and how they should be applied. It is for us to say only whether there shall be such an officer; we should say nothing about his compensation. He never heard any objection made to the office, and he did not think that in his part of the country scarcely a vote would be given against retaining it. This however was not the question before the committee. He said if it was requisite that the lieutenant governor should be at his post, that he should preside at the council board—if the duties of a presiding officer are more difficult than those of another member, the Legislature ought to have power to make him a compensation. As to the lieutenant governor's being always a wealthy man, keeping a sumptuous table and living in splendor, this was entirely out of the question.

Mr. STORY of Salem said he did not object to a thorough examination of the constitution and making such amendments as were salutary. Those parts which were weak he would strengthen, and those which were useless he would strike out. They were not making a law which could be repealed, but a constitution which could not be altered. He said there was very great weight in the observation of the gentleman from Salem, (Mr. PICKMAN,) that they should not bind the discretion of the Legislature except where it was liable to abuse. They ought to have confidence in the Legislature; this principle was congenial to the nature of our government. It was incumbent on gentlemen who proposed any change in the constitution, to show the necessity or expediency of the measure. Had gentlemen shown any necessity or expediency in the present case? Was any gentleman so wise, of such foresight, as to be able to say that in all future times and in all the vicissitudes of human affairs, it would never be necessary to have such an officer as that of lieutenant governor—that his duties would never become important, and that they would never deserve any compensation? He would pass over the arguments that we ought not to have a lieutenant governor, not because he was not prepared to show the importance of having that office, but because it was not the question before the committee.

The learned gentleman then proceeded to argue, with great force and eloquence, that the office so far from being a sinecure had important duties—that it was an office of great dignity and responsibility—that if no compensation is given, none but wealthy citizens can accept the office—that it is not to be expected that the person best qualified for the office will always be able, like the good, virtuous and pious individual, so distinguished for his extensive munificence and benevolence, who has for several years filled the office, to dispense with a suitable compensation for his services—that the lieutenant governor cannot avoid incurring expense in consequence of his office—that it was not a republican principle to be obliged to choose a rich man who will serve without compensation, or a poor one to be corrupted—that it could not be expected that good, able, and faithful men should be found to serve the public without a suitable compensation—and that it was no economy to starve men in office.

Mr. FIRST of Reading concurred in the views expressed by the gentleman who preceded him. The question of compensation to the lieutenant governor belonged to the Legislature. If the Convention should adopt this amendment, it was saying to the people of the Commonwealth that they could not choose another body of men fit to be trusted. It was an affront on the people. It was attaching more consequence to themselves than they were entitled to. He objected to tying up the people by unnecessary restrictions. They had present experience of the injurious effect of superfluous limitations. Had it not been for six words in the constitution, relative to the apportionment of senators, the people never would have called this Convention. He stated other reasons against the amendment.

Mr. MITCHELL of Bridgewater spoke in favor of the amendment, and Mr. HOLMES of Rochester, against it.

The question was taken on the amendment, and decided in the negative—105 to 282.

The second resolve was then read in the following words :

*Resolved*, That it is expedient and proper to amend the same, by striking out in the first article of the third section and same chapter, relating to the council, &c. the word "nine," and insert "seven;" also the word "five," and insert "four."

Mr. PICKMAN explained the reasons of the committee for recommending a reduction of the number of members of the council from nine to seven. They were in substance, that by the separation of Maine from the Commonwealth the duties of the council would be considerably diminished—that in fact for many years past it has been the practice to choose seven of the nine counsellors from Massachusetts proper—that this number would be as adequate to perform the duties as nine before the separation. If the number of members be established at seven it would be proper to reduce the number required at a quorum to four.

Mr. BLISS of Springfield was opposed to the amendment. He considered the duties which devolved upon the council as extremely important, and he could not consent that two or three men should have



the performance of those duties. If four members are to form a quorum they can perform all the duties of the council. Suppose the governor and lieutenant governor to reside in this vicinity, and three counsellors to be chosen from three adjacent counties, we should have the whole executive department of the Commonwealth within a circuit of ten miles from the metropolis. This was a case not unlikely to happen. There was nothing to control the governor from calling a council when he pleases. Suppose a vacancy to occur in an important office, and the council to be summoned upon a short notice, it would be impossible that the distant members should attend, and the duty of making the appointment would fall upon the members in this vicinity. He knew that the governor must have a discretion to summon the council at pleasure—that exigencies might arise that would admit of no delay—that it was important that a considerable part of the executive government should reside near the metropolis. Yet it was also important that every part of the Commonwealth should be represented in this department of the government. He thought that if but seven were to be chosen to the council, five should be required to be present on making appointments.

Mr. PICKMAN said as he was called upon he hoped he should be excused from rising again. He was surprised at the objection made by the gentleman from Springfield. There was a general expectation that the council would be reduced, and he had expected that gentlemen would be in favor of a greater reduction. He thought that seven was a sufficient number. Before the separation, the council in effect consisted but of seven members, as the gentlemen from Maine on account of their great distance seldom attended. The objection of the gentleman existed as forcibly against the old arrangement as against that now proposed. To effect a more general distribution of the members, it was proposed that but one should be chosen from a county, instead of two, the present limitation. He did not believe that we ever had or ever should have a governor who would undertake to nominate to an important office, and to have the nomination confirmed, without notice to all the members. It was not to be supposed that he would venture to appoint a chief justice when the members from this vicinity only were present. It was a supposition too improbable to be admitted. It was necessary on account of emergencies that may arise, that a quorum of the council should be within a convenient distance. It was even now often difficult to obtain a quorum. The compensation was too small to induce members to give up their time entirely to the duties of the office. It was a sacrifice not to be expected. It was necessary that the quorum should be small, and one which could be formed from members within a short distance from the seat of government. The difference between five and four could make no difference in the gentleman's argument, as it required the same number to make a majority in one case as in the other.

Mr. FAY of Cambridge wished to say a few words in reply to the gentleman from Springfield. His objection supposed that a fraud

might be committed by the governor, which was not to be presumed ; and if committed would subject him to impeachment, or that the council might be taken by surprise, which event could not happen, as nominations are required to be made seven days before the appointment takes place.

Mr. BLISS had not forgotten that all appointments to judicial offices were made only after seven days' notice, but the Legislature were continually creating important offices, in the appointments to which no such notice was required. He knew that important appointments had been made when some members of the council did not know even that any meeting of the council had been held, and he saw no reason why such cases should not occur again. He did not impute fraud to any one. The duties of the office were now much greater than when the constitution was established. He was not satisfied that the council ought not to be differently constituted.

Mr. BLAKE was not satisfied with the reasons given by the gentleman from Salem for the proposed alteration. He had not shown that it was necessary or clearly expedient. He proceeded to argue that the duties of the council were as arduous and important now, as at the time of the adoption of the constitution.

The question was then taken and the resolution adopted—281 to 80.

The next resolution was then read as follows :

*Resolved*, that it is expedient and proper to amend the same by striking out the whole of the second article of the same section and insert, "seven counsellors shall be annually chosen from among the people at large on the      day of      by the joint ballot of the senators and representatives assembled in one room."

Mr. D. DAVIS of Boston thought that there was a defect in the resolution. There was no provision for the qualifications of the counsellors. Under the present constitution it was required that the counsellors should be first chosen from the senate. It was proposed now to dispense with that requisition. Yet he presumed it was intended that they should now be qualified in a similar manner. If so, some further provision was necessary.

Mr. PICKMAN agreed in the propriety of this suggestion. Some further remarks were made on this subject by him, and several other gentlemen.

Mr. FREEMAN of Sandwich, after stating the reasons for his motion, moved to strike out the words, "from among the people at large." The motion was negatived.

Mr. BOND of Boston suggested that some provision was necessary for supplying vacancies. The resolution makes it imperative that the seven members should be chosen on a certain day. Some other remarks were made by him and other gentlemen on this point.

Mr. BLISS was not satisfied with the article. He thought it not necessary to take away from the people their voice in the choice of counsellors. He was against the innovation. He saw no good and there might be evil in it.

A motion was made that the committee should rise. But the motion was withdrawn at the request of Mr. PARKER (the President) who wished to propose an amendment. It was required that the counsellors should be qualified by taking the oaths in presence of the two houses of the Legislature. It sometimes happened that gentlemen elected could not attend during the session, and the inconvenience would in future be still greater if there was to be but one session in the year. He therefore offered a resolution providing for such an amendment, that if all the counsellors elected should not attend so as to be qualified in convention of the two houses, they shall be qualified before the governor and such counsellors as have been previously qualified.

Mr. DAVIS moved to amend the resolution before the committee, by inserting after the word room, "who shall have the same qualifications as are required by this constitution for senators of the Commonwealth."

The committee then rose, reported progress, and asked leave to sit again, which was granted.

Mr. STORV of Salem, from the committee on the judiciary, submitted the following reports:—

The committee to whom was referred so much of the constitution of this Commonwealth as is contained in the third chapter of the second part and respects the Judiciary power, with directions to take into consideration the propriety and expediency of making any, and if any, what alterations or amendments therein, and to report thereon, have attended to the duty assigned to them, and respectfully ask leave to report—

That they have taken into consideration the several articles respecting the judiciary power and are of opinion that some amendments and alterations may be made therein which will conduce to the public good, and extend the blessings we already derive from an upright and impartial administration of the laws.

By the first article of the constitution, any judge may be removed from his office by the governor, with the advice of the council, upon the address of a bare majority of both houses of the Legislature—the committee are of opinion that this provision has a tendency materially to impair the independence of the judges, and to destroy the efficacy of the clause which declares they shall hold their offices during good behavior. The tenure of good behavior seems to the committee indispensable to guard judges on the one hand from the effects of sudden resentments and temporary prejudices, entertained by the people, and on the other hand, from the influence, which ambitious and powerful men naturally exert over those who are dependent upon their good will. A provision which should at once secure to the people a power of removal in cases of palpable misconduct or incapacity, and at the same time secure to the judges a reasonable permanency in their offices seems of the greatest utility; and such a provision will in the opinion of the committee be obtained by requiring that the removal, instead of being upon the address of a *majority*, shall be upon the address of *two thirds* of the members present of each house of the Legislature. And this provision has the additional recommendation that it is engrafted into the constitution of some of the other states, and exists in analogous cases in the constitution of the United States.

There is also a supposed ambiguity in the first article which has given rise to a question whether the justices of the peace were removable from office upon address, as other judicial officers are. The committee are of opinion that this ambiguity ought to be removed, and have endeavored to effect that object by a slight change of the phraseology.

The committee are further of opinion that it will be for the public good that the Legislature should have authority to create a supreme court of equity, distinct from the supreme court of law, whenever exigencies of the public service shall demand

Courts of equity seem indispensable to a perfect administration of public justice,

since there are many cases of trusts, confidences, complicated accounts, partnerships, contributions among heirs and devisees, and above all of *frauds*, which can scarcely admit of complete relief in any other tribunals. The Legislature under our present constitution, have undoubtedly full power to create a court of equity. But it is believed that such a court must, by the present frame of government, be subordinate to the supreme judicial court, and appeals must lie from its decrees to that court. It may become necessary, and in the judgment of the committee it is highly important, that the Legislature should possess the power to form at its pleasure an independent supreme court of equity, of equal dignity with the supreme court of law, whose decrees should not be re-examined except by some superior tribunal common to each and independent of each. This may be effected by giving power to the Legislature, if in its judgment the public good shall require it, to establish a court of appeals, where the judgments of the supreme courts both of law and equity might be subject to revisions, under such regulations as the Legislature shall direct.

Of such a court the judges of the supreme courts of law and equity might, *ex-officio*, be members, entitled to give their reasons on all appeals from their own decisions, but having no voice in the final sentence of affirmance or reversal of their own decisions. The other members of such court might be appointed and hold their offices by such a tenure as the Legislature might direct. There would be dignity and importance in such offices; and probably either by making certain high officers *ex-officio* members of such court, or by appointments of some of our most distinguished citizens to such offices, as *offices of honor only*, the court of appeals might be made a court of great utility and security, as well to the citizens as to the government, at a very inconsiderable expense. The committee are of opinion that there is not any material objection to giving to the Legislature the proposed powers, since it will always be in the option of the Legislature to exercise them or not, and resting on the legislative will, they will never be exercised for any length of time, unless they are found essentially to promote the public interests.

The committee are further of opinion that the second article respecting the judiciary power is of very questionable utility, and may lead to serious embarrassments and is therefore not necessary to be retained in the constitution. The question proposed by the Legislature or by the governor and council to the judges may deeply affect private rights and interests, and they must almost inevitably be decided by them, without the important benefit of *an argument*. It is contrary to the general theory of a republican government that the right or property of any citizen should be taken away without an opportunity of being heard upon the questions of law which those rights and that property may involve. Another class of cases of a more public character may be referred to the judges, involving questions of general interest, of political power, and perhaps even of party principles—and thus the proper responsibility of the public functionaries may be shifted upon judges who are called upon only to *decide*, and not to *act*. It is desirable, as far as possible, to remove the judges of the supreme court from any connection with the other departments of the government, either executive or legislative, so that in the performance of their own proper duties in the administration of civil and criminal justice, they may *continue* to possess unimpaired the reverence and affection of the whole people.

The committee propose no essential amendment in the third article, other than a provision that notaries public should hold their offices by the same tenure as justices of the peace, and should be removable from office in the same manner.

The committee are of opinion that the fourth article requires no amendment; and that the fifth article has become inoperative, in consequence of the jurisdiction in causes of marriage, divorce and alimony, and appeals from the judges of probate having been by law transferred to the supreme judicial court, and therefore it is not necessary to be retained in the constitution.

The committee beg leave to recommend to the Convention the adoption of the accompanying resolutions. All which is respectfully submitted.

By order of the committee,

JOSEPH STORY, *Chairman*.

*Resolved*, That the first article of the third chapter of the constitution respecting the judiciary power ought to be amended, so that "all judicial officers duly appointed, commissioned and sworn, shall, except when the constitution otherwise provides, hold their offices during good behavior; but the governor, with the consent of the council, may remove any judicial officer upon the address of two thirds of the members present of each house of the Legislature."

A motion was made that the committee should rise. But the motion was withdrawn at the request of Mr. PARKER (the President) who wished to propose an amendment. It was required that the counsellors should be qualified by taking the oaths in presence of the two houses of the Legislature. It sometimes happened that gentlemen elected could not attend during the session, and the inconvenience would in future be still greater if there was to be but one session in the year. He therefore offered a resolution providing for such an amendment, that if all the counsellors elected should not attend so as to be qualified in convention of the two houses, they shall be qualified before the governor and such counsellors as have been previously qualified.

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The committee then rose, reported progress, and asked leave to sit again, which was granted.

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That they have taken into consideration the several articles respecting the judiciary power and are of opinion that some amendments and alterations may be made therein which will conduce to the public good, and extend the blessings we already derive from an upright and impartial administration of the laws.

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The committee are further of opinion that it will be for the public good that the Legislature should have authority to create a supreme court of equity, distinct from the supreme court of law, whenever exigencies of the public service shall demand. Courts of equity seem indispensable to a perfect administration of public justice,

since there are many cases of trusts, confidences, complicated accounts, partnerships, contributions among heirs and devisees, and above all of *frauds*, which can scarcely admit of complete relief in any other tribunals. The Legislature under our present constitution, have undoubtedly full power to create a court of equity. But it is believed that such a court must, by the present frame of government, be subordinate to the supreme judicial court, and appeals must lie from its decrees to that court. It may become necessary, and in the judgment of the committee it is highly important, that the Legislature should possess the power to form at its pleasure an independent supreme court of equity, of equal dignity with the supreme court of law, whose decrees should not be re-examined except by some superior tribunal common to each and independent of each. This may be effected by giving power to the Legislature, if in its judgment the public good shall require it, to establish a court of appeals, where the judgments of the supreme courts both of law and equity might be subject to revisions, under such regulations as the Legislature shall direct.

Of such a court the judges of the supreme courts of law and equity might, *ex-officio*, be members, entitled to give their reasons on all appeals from their own decisions, but having no voice in the final sentence of affirmance or reversal of their own decisions. The other members of such court might be appointed and hold their offices by such a tenure as the Legislature might direct. There would be dignity and importance in such offices; and probably either by making certain high officers *ex-officio* members of such court, or by appointments of some of our most distinguished citizens to such offices, as *offices of honor only*, the court of appeals might be made a court of great utility and security, as well to the citizens as to the government, at a very inconsiderable expense. The committee are of opinion that there is not any material objection to giving to the Legislature the proposed powers, since it will always be in the option of the Legislature to exercise them or not, and resting on the legislative will, they will never be exercised for any length of time, unless they are found essentially to promote the public interests.

The committee are further of opinion that the second article respecting the judiciary power is of very questionable utility, and may lead to serious embarrassments and is therefore not necessary to be retained in the constitution. The question proposed by the Legislature or by the governor and council to the judges may deeply affect private rights and interests, and they must almost inevitably be decided by them, without the important benefit of an *argument*. It is contrary to the general theory of a republican government that the right or property of any citizen should be taken away without an opportunity of being heard upon the questions of law which those rights and that property may involve. Another class of cases of a more public character may be referred to the judges, involving questions of general interest, of political power, and perhaps even of party principles—and thus the proper responsibility of the public functionaries may be shifted upon judges who are called upon only to *decide*, and not to *act*. It is desirable, as far as possible, to remove the judges of the supreme court from any connection with the other departments of the government, either executive or legislative, so that in the performance of their own proper duties in the administration of civil and criminal justice, they may *continue* to possess unimpaired the reverence and affection of the whole people.

The committee propose no essential amendment in the third article, other than a provision that notaries public should hold their offices by the same tenure as justices of the peace, and should be removable from office in the same manner.

The committee are of opinion that the fourth article requires no amendment; and that the fifth article has become inoperative, in consequence of the jurisdiction in causes of marriage, divorce and alimony, and appeals from the judges of probate having been by law transferred to the supreme judicial court, and therefore it is not necessary to be retained in the constitution.

The committee beg leave to recommend to the Convention the adoption of the accompanying resolutions. All which is respectfully submitted.

By order of the committee,

JOSEPH STORY, *Chairman*.

*Resolved*, That the first article of the third chapter of the constitution respecting the judiciary power ought to be amended, so that "all judicial officers duly appointed, commissioned and sworn, shall, except when the constitution otherwise provides, hold their offices during good behavior; but the governor, with the consent of the council, may remove any judicial officer upon the address of two thirds of the members present of each house of the Legislature."

That the Legislature may, if the public good shall require it, establish a supreme court of equity, distinct from the supreme court of law. But questions of fact in suits in equity, shall, if either party require it, be tried by a jury in such court as the Legislature may direct.

That the Legislature may, if the public good may require it, establish a court of appeals, to revise the decisions of the supreme courts of law and equity, under such regulations and restrictions, as may by law be prescribed; which court shall consist of not less than members, nor more than members. The judges of the supreme courts of law and equity shall ex-officio be members of such court of appeals; and may respectively assign the reasons of their own decisions, but they shall have no voice upon the question of a reversal or affirmance of their own decisions. The other judges of the court of appeals shall be appointed and hold their offices as the Legislature shall direct.

*Resolved*, That it is inexpedient to retain the second article of the same chapter of the constitution, requiring the judges of the supreme court to answer questions proposed to them by the governor and council, or either branch of the Legislature.

*Resolved*, That the third article of the same chapter of the constitution ought to be amended, so that justices of the peace and notaries public shall hold their offices during seven years, if they shall so long behave themselves well; and upon the expiration of any commission the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well being of the Commonwealth, and they may be removed from office by the governor with the consent of the council, upon the address of two-thirds of the members present of each house of the Legislature.

*Resolved*, That it is inexpedient to retain the fifth article of the same chapter of the constitution, which gives jurisdiction to the governor and council of causes of marriage, divorce, and alimony, and appeals from the courts of probate.

The committee to whom was committed the resolution of the Convention to consider the propriety and expediency of providing in the constitution that the person of a debtor, where there is not a strong presumption of fraud, shall not be committed to or continued in prison after delivering up on oath or affirmation all his estate, real and personal, for the use of his creditors, in such manner as shall hereafter be regulated by law, have attended to the duty assigned them and respectfully ask leave to report.

That by the existing constitution, the Legislature possess full power to make the provision contemplated by the resolution, if in its judgment the public good require it; and, therefore, it is inexpedient to insert in the constitution any specific clause on the subject. The committee beg leave to report the accompanying resolution for the adoption of the Convention.

All which is respectfully submitted, by order of the committee.

JOSEPH STORY, *Chairman*.

*Resolved*, That it is inexpedient to insert in the constitution any provision, "that the person of a debtor, where there is not a strong presumption of fraud, shall not be committed to, or continued in prison, after delivering up on oath or affirmation all his estate, real and personal, for the use of his creditors in such manner as shall hereafter be regulated by law."

On motion of Mr. STORY, the reports were severally committed to a committee of the whole, ordered to be printed, and made the order of the day for Monday next, at 12 o'clock.

Mr. GURNEY of Abington had leave of absence on account of the sudden death of his father.

The House adjourned.

FRIDAY, DECEMBER 1.

The House met at 10 o'clock, and attended prayers offered by the Rev. Mr. Jenks. The journal having been read,

The Convention resolved itself into committee of the whole on the unfinished business of yesterday, Mr. Varnum in the chair, and the further consideration of the third resolution was taken up.

Mr. Bliss of Springfield moved to amend the report, by striking out all that part of the third resolution, after the word *chosen*, and substituting the following, viz. :

"From among the persons returned for counsellors and senators, on the day of by the joint ballot of the senators and representatives assembled in Convention, and the seats of the persons thus elected from the senate shall be vacated in the senate, and the remaining senators left shall constitute the senate for the remainder of the year."

Mr. Bliss said, if he understood the chairman of the committee who made the report, he thought the constitution ought to have been construed in conformity with the mode which he now proposed. He, Mr. B., had no doubt that this construction was correct. and that it was the original intention that the persons elected as counsellors and senators, should be considered liable to be transferred from the senate to the council, and, when selected, that their seats should be vacated in the senate. Nothing, therefore, was necessary, but to correct the improper procedure which had arisen under the constitution. Not more than a half a dozen cases had occurred within twenty years, in which the senators elected to the council have accepted the appointment, and almost all the persons elected as counsellors and senators, have considered themselves elected, in fact, only as senators. He thought this course had been incorrect under the constitution as it now stands. It was in conformity with the genius of the constitution, that public officers should be elected directly, when it can be done, by the people. He was not tenacious of this particular method; he should be willing that the counsellors should be chosen in districts; but as this proposition makes less alteration in the original forms of the constitution, and as it was easy to correct the erroneous procedure which had grown into practice, from circumstances which he hoped the Commonwealth would not again be placed in, he thought this course would be best. The only amendment necessary would be to make it peremptory on the senators elected, either to vacate their seats altogether, or to accept their appointment to the council. The selection would commonly be made in conformity to the wishes of persons elected, and of the electors. He saw no difficulty in this method, and he preferred it to taking away the choice entirely from the people.

Mr. Wells of Boston approved of the proposition, except that he wished it to have one modification. He therefore moved to amend the amendment by inserting the words "not more than one counsellor shall be elected from one county."

Mr. Bliss said that this object was already provided for in a subsequent resolution reported by the committee.

Mr. Wells withdrew his motion.

Mr. Dutton thought there would be a difficulty in proceeding.



with the amendment at this time. It is proposed to choose the counsellors from the senate, without liberty to resign. He understood that the committee who have that part of the constitution under consideration which relates to the senate, would form that body without any reference to counsellors. If this amendment pass, the council must be taken from the senate, which may embarrass the report of the committee. He would suggest the propriety of a postponement of the amendment till that committee should report.

The CHAIRMAN inquired if the gentleman from Boston intended to postpone the whole resolution, as that would be the consequence of postponing the amendment.

Mr. DUTTON did not insist on the motion, if such would be the effect.

Mr. FREEMAN of Sandwich said he was opposed to the resolution of the committee. The idea which was suggested yesterday by the gentleman from Salem, (Mr. PICKMAN) was new to him, that the constitution intended that counsellors chosen from the senate should be under an obligation to accept the appointment; but he was persuaded it was the true construction, and he considered it one of the most beautiful features in the constitution; but it had been distorted by the practice of the last twenty years. He was now more impressed with the sacredness of the constitution, and would not change it in this particular. He objected to the principle of the resolution, as it was going to deprive the people of a voice in the choice of counsellors. He likewise considered the senate, or a portion of it, as the proper advisers of the governor, and on this ground was opposed to the resolution.

Mr. LOCKE of Billerica, to obviate the gentleman's objection to continuing the discussion, mentioned that the committee on the part of the constitution which respects the senate, had proceeded so far as to agree to report that the senators should be distinct from the counsellors, and he wished that the question before the present committee might be determined before the select committee on the senate made their report.

Mr. PARKER (President) thought there would be great inconveniences in the mode of election proposed in the amendment of the gentleman from Springfield. The forty persons elected as counsellors and senators had generally been chosen without any reference to their qualifications for the office of counsellor, and in consequence the practice had arisen of electing members from the senate board with the understanding that they should resign, and afford the opportunity of choosing counsellors at large. The practice had been a disgraceful farce, and ought now to be remedied. But the remedy now proposed would increase instead of remedying the evil. It was proposed that seven persons should be appointed from the senate, without any right to decline vacating their seats there. The gentlemen chosen to the senate generally accept with the expectation of remaining in that body, because the chance of being one of the seven elected to the council would be too small to influence their

determination in accepting the choice. Any one so elected would be liable to be transferred to the council in opposition not only to his own wishes, but to those of the people who elected him, and deprived of any voice in the legislative department of the government. There is another objection.

The senate are elected by the majority of votes in their several districts, and, consequently, a majority of the senate will be in concurrence with the opinions of the majority of the people voting for them. But it will be in the power of the two branches in Convention to change this majority; to put a stop on the voice of any seven of the members, to put them asleep in the council, and, thereby, to change the majority of the senate to a contrary opinion. It will thus be in the power of the house of representatives, which being the most numerous body will commonly control the vote in Convention, to take away the check which the senate should have as one of the branches of the legislature, by changing the majority in such manner as to bring it in concurrence with the majority of their own body. It would also be a restraint upon the people in the choice of their senators. There may be men willing to serve in the senate, especially if there is to be but one session of the Legislature, who would not be willing to be subject to be called to the seat of government at every meeting of the council. They would always be compelled to choose men prepared to perform the duties of either office, without knowing which it was to which they could be called.

Mr. FOSTER of Littleton was opposed to everything like a wheel within a wheel. It was proper that the people should know what they were voting for. It was best to choose senators separately and counsellors separately. He thought thirty-one was a suitable number for the senate, and was pleased when he was informed that gentlemen had thought of establishing that number. But if seven should be taken out of the senate, it would be too much reduced, and he hoped the amendment of the gentleman from Springfield would not prevail.

Mr. MORTON of Dorchester was in favor of having the counsellors elected by the people; and if it was proposed to separate the counsellors from the senators, he thought that both might be conveniently elected by districts. He was opposed to the amendment, as it would enable the majority of the house of representatives to take from the senate just such a council as they pleased, and leave such a majority in the senate as would coincide with their own political views; since the amendment prohibits the senators declining to act as counsellors when designated for that purpose. He thought that if thirty-one was to be the number fixed upon for the senate, the gentleman himself who offered the amendment would be unwilling to take so many as seven from that body.

Mr. BLISS was not satisfied of the force of the objections which had been made to his amendment. Gentlemen had not shown that it was not conformable to the spirit of the constitution. The gentleman from Boston (Mr. PARKER) had said that in the election of

rose therefore to propose a division of the question. There was also an ambiguity in the phraseology of the gentleman's amendment in respect to the words "people at large;" as both branches of the Legislature were to join in the ballot, this phrase might be thought to exclude members of the house of representatives from being counsellors. It might be very proper that representatives should be taken for counsellors, as their places might be easily supplied by a new election. Mr. L. wished that the first part of the gentleman's amendment might be amended by striking out "the people at large," and inserting, "provided however that no person shall be eligible to the office of counsellor, who, at the time of the election, has a seat in the senate."

The CHAIRMAN said there could be no division when the motion was to strike out and insert.

Mr. L. was aware of the rule, but there ought to be some mode of bringing the propositions distinctly before the committee; otherwise they would be under a necessity of adopting a good principle together with a bad one, or rejecting both.

The CHAIRMAN replied, that if the whole is rejected, the parts can be brought forward separately.

Mr. PICKMAN said, if he understood the gentleman from Worcester, he had no objection to his proposition.

Mr. DANA said great difficulties had arisen from the minuteness of the propositions which has been brought before the committee. He had hoped, after the proposition of the gentleman from Boston, (Mr. JACKSON) that they should have been more attentive to the settling of principles.

Mr. BLISS was as much opposed to this resolution as he was to that which was reported by the select committee, and for the same reason. He was entirely dissatisfied with any modification of this principle, and satisfied that the choice ought to be by the people in some mode or other. If it was unpleasant to talk about districts we might substitute some other word, but this was as good as any. He thought the people were not in danger of being imposed upon by an improper division of the state into districts for this important election—an election which was becoming more and more important every year, by the additional duties which were imposed upon the council by the Legislature. Divisions, it was true, between the governor and council, on political subjects, were unpleasant. But if the people are divided, the difficulty cannot be avoided. Gentlemen would recollect two instances, under different governors, when there was a difference of political opinions, between the governor and his council, chosen under the present constitution. This was an unpleasant occurrence, which he hoped would not occur again, though it might in the proposed mode of choosing. He saw no reason why the people should not elect according to the original spirit of the constitution. He was not prepared with any motion for giving the choice to the people, but he thought if they were chosen in districts, the people would be better represented. There

could be no evil from districting the Commonwealth in such manner that one counsellor should be chosen from each district. It was not necessary that the districts should be adjusted with great nicety, or be frequently changed. It might be done either by the convention, to be permanent, or by the Legislature, after each valuation.

Mr. LINCOLN's amendment was then read, and accepted by Mr. PICKMAN as a modification of his motion, viz., to strike out the words "from the people at large," and insert at the end, the following: "Provided however that no person shall be eligible to the office of counsellor, who, at the time of the election, has a seat in the senate."

Mr. BLAKE opposed the amendment on the ground that it was abridging the rights of the people. He preferred choosing by districts to the mode now proposed.

Mr. FLINT of Reading rose to offer the reasons upon his mind in favor of the proposition now before the committee. He thought it was conformable with the spirit of the constitution, as it was originally framed, and with the practice under it, to require that the counsellors should be chosen in the first instance from the people at large. The only change was, that senators would be chosen to serve in the senate only, and the counsellors would be chosen by representatives from every town, and senators from every county in the Commonwealth, elected by the people with the express understanding that they were to choose counsellors as well as to perform their other duties. The representatives and senators coming together for this purpose would be better qualified to select proper persons for counsellors than the few persons who, if the State were districted, would assemble in the districts to make nominations. The governor wanted a good council, and persons of different qualifications—a military man—a good lawyer—a good farmer—and many of them are well educated—many different professions. The two houses in convention would have the best opportunity for making a proper selection. The right of making this appointment may be conferred by the people, or the members of the two houses, with the same propriety that the right of making appointments to important offices is conferred on the governor and council. Most people are not acquainted with the candidates for office in large districts, and must depend upon a few individuals to make the selection. He thought that the members of the two houses in convention, would be qualified to make the most proper selection.

Mr. SALTONSTALL of Salem said that he had been anticipated in a part of the remarks which he intended to make, by the gentleman from Reading. But he wished to say a few words in addition. The gentleman from Boston (Mr. BLAKE) would consent to no change in the constitution which was not shown to be necessary. Yet he was opposed to the mode of election of counsellors by the two houses in convention, from the people at large, and proposed to choose them in districts. Mr. S. contended that the first mode was conformable to the spirit of the existing constitution, and the other

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was a material and unnecessary change. He read a passage from the constitution, to show that it was not the intention or expectation of the framers of it that the members chosen from the senate to the council should be required to accept a seat at the council board. "In case there shall not be found upon the first choice the whole number of nine persons who will accept a seat in the council," the deficiency to be made up from among the people at large. There is no direction to supply the vacancy from the senate, and it seems to be supposed that they may decline. It must have been foreseen that there might often be very proper reasons why they should decline. If they did not, it would often happen that the check of the senate upon the other house would be destroyed, and accordingly it had been the practice from the beginning that they should decline. There were various reasons for their doing it. They might be needed in the senate to preserve the majority there that the people had given. Some might be chosen who were willing to serve as senators, but not as counsellors. It had therefore been the practice from the beginning for many to decline, and for twenty years past the practice had been invariable for all to decline. It was therefore conformable, both to a fair interpretation of the instrument itself, and to the construction that had been given to it by the practice of forty years, approved by the people, that the council should be wholly or in part chosen from the people at large. It was not expected by the people when they chose their senators, that they would accept the appointment of counsellor. There were important reasons why there should be liberty to fill this office from the people at large. Qualifications were looked for which were not necessary for the senate. A variety of talents and qualifications was required in the members of the council, which would not be expected if they were chosen in districts. There could then be no concert. They might be all lawyers—or all military men—and none particularly qualified for taking charge of some important departments of the office. Gentlemen chosen to that board would look round and not find those to assist them whom they had been accustomed to meet there. He mentioned, also, the difficulty of forming the districts. It would be difficult at the present moment to divide the State into seven districts in a manner that should give satisfaction, and the difficulty might be at another time much greater. He hoped that the measure would not be resorted to. It was only necessary to make the mode of choice what it had been in practice for the last twenty years.

Mr. BALDWIN of Boston said it would be an objection to taking the seven senators from the senate; if it were to consist of thirty-one, that it would leave an even number and deprive the president of the casting vote. It would be difficult to choose from the people at large, except through the representatives. It was of little consequence from what part of the State they were chosen, if they were fit persons. It was an objection to taking them from the senate that where counties were entitled to but one senator they would be

deprived of their representation if he were chosen to the counsel. The people feel a greater interest in the legislative business than in that of the counsel. No one had a more profound homage for a government of the people than himself. But there appeared to be insuperable difficulties in giving to the people directly, the choice of counsellors. The members of the two houses in convention could have their eyes on every part of the Commonwealth.

Mr. DUTTON considered the amendment in its present form, as presenting the same distinct proposition, as the resolution of the select committee. They both provide that the counsellors shall be chosen from the people in exclusion of the senators by the joint ballot of both houses. It was with reference only to a choice by the Legislature, or by the people in some form or other, that he intended to consider the amendment. A choice by the Legislature from the people at large was the most simple and convenient. It got rid of the ceremony of first choosing senators, and conformed the theory of the constitution to the practice under it. The practice was the result of the strong political necessity of keeping the power of the majority in the hands of the majority. As matter of theory, or abstract principle, he might agree with the gentleman from Springfield; but experience has shown us that parties do, and always will exist; and that the provision of the constitution could not be literally complied with, without endangering an important principle of government. The importance of this principle has been so clearly and forcibly stated by the gentleman from Boston, that nothing need or can be added. He was also satisfied with the argument of the gentleman from Salem, that the practice of the last twenty years was not a departure from the spirit of the constitution. The amendment provides that the Legislature shall elect. Gentlemen who have opposed this mode have said that the people should elect in districts. These are the two modes presented: and he would confine his remarks chiefly to the statement of some objections to an election by the people in districts. Who shall form these districts? It is said the Legislature. Will this Convention then shrink from this task and throw it upon the discretion of the Legislature, where it will become connected with party interests and passions, and there remain the subject of contention and cabal, in all the bitterness of party spirit. There must be seven districts only. As these would be large, it would be difficult for the people to select the candidates. In some districts there would be no choice—another, and perhaps another trial must be had, before the elections could be completed. Four of the counsellors chosen might be of one political party, and three of another, and as the lieutenant governor is ex-officio a member of the council, there would be an equal division. The executive department then, which, as its title imports, is to carry into effect, to execute, to act, might be obstructed by a divided counsel, at a moment too, when it was important to act promptly. He was in favor of checks and balances in the government, as much as any gentleman, but he was also in favor of introducing them in the



Legislature ought to be free to choose a council. If a member of the senate is chosen, it is for him to decide whether he will accept—in the same manner as if any other office were offered to him. He disliked the introduction of this new principle. It was not to be found in this or any constitution. He hoped it would not be adopted. While he opposed, with some zeal, a power to compel senators to relinquish their seats, he opposed also a new and unheard of restriction on the power of the Legislature, and on the will and discretion of individuals. This was a case in which he thought there was danger of too much regulation.

Mr. PICKMAN said that this principle of exclusion was found in our own constitution, as, after one choice of counsellors was made from the senate, and the counsellors chosen declined, the other senators would not be eligible.

The question for striking out the proviso was taken and decided in the negative—88 to 222.

The question recurred upon the amendment of the gentleman from Salem, and after some further discussion, it was withdrawn by the mover.

Mr. PARKER (the President) offered a resolution as a substitute for that reported by the select committee, which he afterwards withdrew.

A motion was made that the committee rise, which was negatived.

The question was then taken on the resolution reported by the select committee and decided in the affirmative—221 to 172.

On motion of Mr. BLISS, the committee rose and reported progress.

A motion was made that the committee be discharged, in order that the subject might be referred again to the select committee, which was negatived.

Adjourned.

SATURDAY, DECEMBER 2.

The Convention met at 10 o'clock, and yesterday's journal was read.

Mr. HORT of Deerfield moved that after this day, the Convention should hold two sessions in a day. He said that he understood that all the committees to whom the several parts of the constitution were referred were ready to report, and he thought the Convention would be prepared to proceed more expeditiously by holding an afternoon session. He stated two reasons for making the motion, 1st, to relieve the minds of gentlemen who were apprehensive that the session was likely to last through the whole winter, and 2d, the importance of diminishing the expense to the Commonwealth, as every dollar which the Convention costs must be provided for by some extra means, because the ordinary revenues of the State were not competent to defray it. The question being about to be put,

Mr. STORR of Salem said he hoped the House would at least deliberate a moment upon the expediency of this measure. The Con-

vention was not a body assembled to consider merely an affair of today, but to revise the constitution throughout, and to adopt measures which are to be binding on posterity. He would not say how able other gentlemen might be to act always correctly upon the most important questions, on the spur of the occasion. They might think their talents fully competent to proceed in this manner. But, for himself, he did not feel able to proceed without deliberation. It required the deliberate exercise of all the talents which he possessed to enable him to act satisfactorily upon the propositions which came in succession before the Convention, and he believed there were other gentlemen in the same situation. It was with the greatest difficulty that he could watch the progress of business as it was already conducted. Resolution after resolution of the greatest importance to us and to posterity, was brought forward and acted upon, without giving that opportunity for deliberation in our closets, which is indispensable for forming a mature conclusion. What will be the consequence if this resolution is adopted? Every moment not necessarily devoted to sleep will be employed in carrying business rapidly through this House. It was of great importance that there should be opportunity for each member duly to deliberate upon the subjects debated here, and to revise the decisions here made. It often happened that after hearing a proposition argued with great power in the House he formed his opinion for the moment in favor of it; but on calm deliberation in his closet, he found occasion to change his opinion. Should there be no opportunity for this? If we mean to propose amendments which the people will not adopt, it would be better not to revise the constitution at all. But if we look to the benefit of our children and posterity, we must take full time for deliberation, and not hurry through the business in such a manner that it cannot be understood. Of what consequence is it to save a few thousand dollars compared with the magnitude of the object, if the result of our deliberations is to be such that posterity will derive substantial benefit from them? New propositions are submitted to this Convention, involving important principles, and we are called upon to say in a moment, whether we will accept or reject them. He was unable to go along with the business, as it was hurried already. If it was to be pushed faster, what would be the consequence? Our minds are called into action for the whole day, new propositions are offered and debated from hour to hour; we are required to sit here until we are exhausted in mind and body, and no opportunity is afforded to review our deliberations at home. He considered the opportunity to revise and weigh the propositions offered, out of the House, as essential for coming to wise results, as the debates here. He hoped the motion would not prevail. It was no object to pass through as much business as possible in a given time, at the hazard of adopting fifty resolutions, which, on mature deliberation, we should be disposed to reject.

Mr. LAWRENCE of Groton hoped the motion might be withdrawn until all the committees had made their reports.

Mr. APTHORP of Boston was as little satisfied as any one with the slow progress which was made in the business of the Convention. He suggested that the object of the gentleman from Salem of obtaining time for examination and deliberation would be gained if the House would meet at a later hour, and it might then be practicable to hold two sessions in a day. He hoped that the gentleman would withdraw his motion for the reason given, and when he renewed it, he would bring it forward in a different form.

Mr. HORT declined withdrawing his proposition. He thought the time had arrived when we might proceed more expeditiously.

The question was taken and passed in the affirmative—182 to 127.

Mr. WARD of Boston said that, upon further examination, he was confirmed in his opinion that the resolution respecting the filling of vacancies, taking place in the recess of the Legislature, in the offices of secretary and treasurer, would more properly be referred to the select committee on that part of the constitution which respects the governor, &c., than to the committee on the part of the constitution relating to the secretary, &c. He therefore moved that this last committee be discharged from the further consideration of the subject, that it may be referred to the first mentioned committee.

Mr. VARNUM of Dracut, chairman of this last committee, said the committee had agreed on this report, which he held in his hand, and was ready to present it. It would therefore be inconvenient to have this subject referred to them.

The question was then taken on Mr. Ward's motion and lost.

Mr. VARNUM, from the committee on that part of the constitution relating to the governor, made the following reports:

*Commonwealth of Massachusetts.*

IN CONVENTION, DECEMBER 2d, 1820.

The committee on so much of the constitution as is contained in the first section of the second chapter of the second part, and who were instructed to take into consideration the expediency of "so amending the tenth article of the second chapter of the constitution, as that in future the captains and subalterns of the militia shall be elected by the written votes of the train-band and alarm list of their respective companies without regard to age," have attended that service and ask leave to report the following resolution:

*Commonwealth of Massachusetts.*

IN CONVENTION, DECEMBER 2d, 1820.

*Resolved*, That it is not expedient so to amend the tenth article of the second chapter of the second part of the constitution, as that the captains and subalterns of the militia shall be elected by the written votes of their respective companies, without respect to age.

Also the said committee who are directed to consider the expediency and propriety of making any alterations in the said second chapter "so as to give relief to such persons as have religious scruples about bearing arms," have had the subject under consideration, and ask leave to report the following resolution:

*Commonwealth of Massachusetts.*

IN CONVENTION, DECEMBER 2d, 1820.

*Resolved*, That it is not expedient so to alter or amend the second chapter of the constitution, as that any provision shall be inserted therein, respecting persons who have religious scruples about bearing arms.

The said committee have also had under consideration the expediency "of so amending the constitution, as that in future the captains and subalterns, the non-commissioned officers and privates of the respective companies of militia in this Commonwealth, shall severally be exempted from the payment of a poll tax for and during the time they shall be liable to do and perform military duty," and ask leave to report the following resolution:

*Commonwealth of Massachusetts.*

IN CONVENTION, DECEMBER 2d, 1820.

*Resolved*, That it is not expedient so to alter or amend the constitution, as that in future the captains and subalterns, and the non-commissioned officers and privates of the respective companies of militia in this Commonwealth, shall severally be exempted from the payment of a poll tax, for and during the time that they shall be liable to do and perform military duty.

J. B. VARNUM, *per order*.

*Commonwealth of Massachusetts.*

IN CONVENTION, DECEMBER 2d, 1820.

The committee to whom was referred so much of the constitution of this Commonwealth, as is contained in the first section of the second chapter of the second part, and respects the governor, militia, &c., with directions to take into consideration the propriety and expediency of making any, and if any, what alterations and amendments therein, have attended to the duty assigned them and ask leave to report the following resolutions, viz.:

1. *Resolved*, That it is expedient to alter and amend the second article of the said first section, by striking out the words "one thousand pounds," and inserting instead thereof the words "— thousand dollars;" and also by striking out the words, "and unless he shall declare himself to be of the Christian religion."

2. That it is expedient to alter and amend the third article of the said first section, by striking out the words "and representatives"—also by striking out the word "April" and inserting the word "November"—and also by striking out the words "last Wednesday of May," wherever they occur in the said third article, and inserting the words "first Wednesday of January."

3. That it is expedient to alter and amend the fourth article of the said first section, by striking out the word "five" and inserting "four."

4. That it is expedient to alter and amend the fifth article of the said first section, by striking out the words, "and to dissolve the same on the day next preceding the last Wednesday in May"—and also the words, "and the governor shall dissolve the said General Court on the day next preceding the last Wednesday in May."

5. That it is expedient to alter and amend the seventh article of the said first section, by striking out the whole of the first paragraph of said article, and substituting instead thereof, a paragraph in the words following, viz., "The governor of this Commonwealth for the time being, shall be the commander in chief of all the military and naval forces of the State, except when in the actual service of the United States; and he shall have all the powers incident to the said office of captain general and commander in chief; to be exercised agreeably to the rules and regulations of the constitution and the laws of the land, and not otherwise."

And also further to amend the same article by striking out of the proviso, and second paragraph thereof, the words, "by virtue of any power, by this constitution granted, or hereafter to be granted to him by the Legislature."

6. That it is expedient to alter and amend the ninth article of the said first section by inserting "notaries public" immediately after the word "coroners."

7. That it is expedient to alter and amend the tenth article of the said first section by striking out of the first paragraph of the said article the words, "of the train band and alarm list."

Also by striking out of the fifth paragraph of the said article, the words "pursuant to the laws of the Commonwealth for the time being," and inserting instead thereof, the words, "or in such other manner as may be provided by law."

Also by striking out the whole of the sixth paragraph of said article, which relates to the appointment of officers of the continental army; and

Also by striking out the letters in the word "divisions" in the last paragraph of said article, and by inserting into the same the word "divisions" immediately after the word "into."

8. That it is expedient to alter and amend the twelfth article of said first section,

by striking out the whole of the same, and substituting an article instead thereof in the words following, viz.:

"The governor may require at any time from all executive officers, information in writing, as to any matter connected with the duties of their respective offices."

9. That it is expedient to alter and amend the thirteenth article of the said first section by striking out of the concluding part of the first paragraph thereof, the words, "and it shall be among the first acts of the General Court, after the commencement of this constitution, to establish such salary by law accordingly." And also by striking out the whole of the last paragraph of said thirteenth article, which is in these words, viz.: "and if it shall be found that any of the salaries aforesaid, so established, are insufficient, they shall from time to time be enlarged, as the General Court shall judge proper."

Which is respectfully submitted.

J. B. VARNUM, *per order*.

On motion of Mr. VARNUM, the report was referred to a committee of the whole, and made the order of the day for Tuesday, at 10 o'clock, and ordered to be printed in the mean time for the use of the members.

The House then resolved itself into a committee of the whole on the unfinished business of yesterday, Mr. VARNUM in the chair.

Mr. PARKER of Boston said he had observed that much difficulty had arisen yesterday from the indistinctness with which propositions had been submitted to the committee. He had devoted some time, since the last adjournment of the Convention, to the subject before the committee, with the view of rendering it more simple and easy to be understood. The committee had already disposed of the three first resolutions reported by the select committee, and two remained to be considered. One of these two proposed that only one counsellor should be chosen from one county; the other related to the time of making the choice. Mr. P. moved to amend the report by striking out the two last resolutions, and substituting several resolutions, which, after some discussion and slight amendment, were adopted as follows, viz.:

*Resolved*, That it ought to be provided in the constitution, that members of the council shall have the same qualifications as members of the senate.

*Resolved*, That all vacancies happening in the council shall be supplied in the manner provided in the third resolution [of the report.]

*Resolved*, That not more than one member shall be chosen from any one senatorial district.

*Resolved*, That in case any member chosen shall not attend seasonably to take the oaths and subscribe the declarations, which may be required by the constitution, before the Legislature, at the session thereof at which he shall be elected, he may take and subscribe the same before the governor, or before the lieutenant governor, and any one or more of the council, who shall have been previously qualified.

Mr. APTHORP wished that the first resolution, which had been passed over, should be taken up, as he had a proposition to make, which he thought would remove the reason for its postponement. He then offered a resolution, which, after being modified, was adopted as follows, viz.:

*Resolved*, That it is expedient and proper that the constitution shall be altered, so that the qualifications of the lieutenant governor shall be the same as are required in this constitution in the case of the governor.

Mr. BALDWIN of Boston said he had reason to think, that the third resolution of the report was not well understood, when the

question was taken upon it yesterday. He therefore moved a reconsideration of the vote.

(The third resolution related to the choosing of seven counsellors, from among the people at large, by the joint ballot of the senators and representatives.)

The CHAIRMAN asked the gentleman if he had voted in the majority when the question was taken. Mr. B. answered in the affirmative.

Mr. PARKER thought the gentleman might attain his object, when the resolution should come before the Convention upon the report of the committee of the whole.

Mr. BLAKE doubted whether the whole subject could be acted upon so conveniently in the Convention. He thought they would only be obliged to go into committee again.

Mr. BALDWIN withdrew his motion.

Mr. STURGIS of Boston moved to amend the report, by adding a resolution, purporting that the counsellors should have notice, as soon as may be, of their election, and should be required to signify their acceptance within —— days after their appointment; otherwise, they should be considered as having declined, and the Legislature should proceed to choose others in their place.

Mr. FREEMAN of Sandwich moved to amend, so that the counsellors should be obliged to signify their acceptance within —— days after they shall have *received* the notice.

Mr. STURGIS said he had no objection to vary his motion so as to read, "within —— days after the notice shall have been *sent*;" if that would meet the gentleman's views.

Mr. PARKER said the gentleman's (Mr. F.) amendment would be highly inconvenient, as it would be difficult for the Legislature to ascertain, whether the counsellors had *received* the notice, or not. He would fill the blank so as to allow ample time for the notice to be given.

Mr. FREEMAN said it had happened on one occasion that all the senators had not been duly notified of their election, and the same thing might happen to the counsellors. All he wished was, that they should not lose their seats through accident, or the inattention of others. Mr. APTHORP proposed that the word *election* should be substituted for *appointment*.

Mr. STURGIS said he wished to settle principles; he did not care a straw about the words. His motion was not to be incorporated into the constitution verbatim.

The question was taken on Mr. FREEMAN's amendment and lost.

Mr. STARKWEATHER of Worthington wished the gentleman from Boston would withdraw his motion. He thought it unnecessary. Delays of this kind, on the part of gentlemen chosen counsellors, were not apt to take place. The Legislature ought not to act till they ascertain that a gentleman has received notice; and there might be circumstances out of his control, to prevent his answer

being returned. Suppose he puts his answer in the post office and there is a failure of the mail; he comes to Boston to be qualified and finds another elected in his room. He has the mortification of losing both his journey and his appointment. Suppose a counsellor is chosen from a distant part of the State two days before the Legislature rises; here there is no time to give notice and receive his answer, and if he should decline, there must be a vacancy in the council through the rest of the year, if the Legislature should have but one session.

Mr. PRINCE of Boston hoped the motion would not be withdrawn; he had no objection to its lying on the table till it shall be determined how they are to be chosen.

Mr. STURGIS withdrew his motion.

Mr. SIBLEY of Sutton said the gentleman from Boston (Mr. BALDWIN) had stated that he voted in the majority on a question taken yesterday, concerning the mode of electing counsellors, and had made a motion to reconsider that vote. He regretted the gentleman had thought proper to withdraw his motion. He thought it important that there should be a reconsideration of the subject, and he would therefore renew the motion.

Mr. BOND of Boston begged leave to inquire whether the gentleman had voted in the majority, when the question was taken; he was informed by gentlemen that the case was otherwise.

Mr. SIBLEY said he hardly remembered, or something like it, and sat down. (A laugh.)

Mr. WEBSTER moved that the committee rise.

Mr. BALDWIN said he would renew his motion.

Mr. WEBSTER rose to a point of order. The motion was to rise.

Mr. BLISS asked if this question was open to debate.

The CHAIRMAN answered that he apprehended it was not.

The question was taken on the motion to rise, and decided in the negative—218 to 127.

Mr. BALDWIN made a few remarks, and concluded by renewing his motion to reconsider.

Mr. BLISS argued in favor of the reconsideration. The subject had not been well understood by a very considerable number of gentlemen, and he apprehended, that if any motion were made in Convention, proposing a different mode of choosing counsellors, it would be necessary for the Convention to resolve itself again into a committee of the whole.

Mr. WEBSTER said if this question was reconsidered, they might with equal propriety reconsider any question. He was not perfectly satisfied in his own mind what mode of choosing counsellors would be the best; he was willing to let the constitution remain without alteration in this respect. The question on this resolution had been taken after a long discussion, and it would be put again in Convention, where gentlemen might adopt the vote of the committee or reject it. This was a fair course, and the proper one to be pursued.

Mr. BLAKE objected to the course proposed by the gentleman from Boston. He said if the Convention should not agree with the committee, they would have to change from convention to committee of the whole, and back again from committee to convention. He thought the question was one of vital consequence, and that more time would be properly spent on it in committee of the whole.

Mr. LELAND said he was in favor of the counsellors being elected by the people, but he thought the proposition of the gentleman from Boston, (Mr. WEBSTER) a fair one.

Mr. SIBLEY was not satisfied that they could act as well on the subject in Convention, as they could in committee of the whole. He said if they rejected in Convention the vote of the committee, the constitution would stand as it now is, and this was not what the people wanted. He wished there might be a reconsideration.

Mr. SLOCUM of Dartmouth said there was a full House now, and if they put off the question to the Convention, it would not be so full probably. Many gentlemen were persuaded, that they were curtailing the rights of the people, in adopting this mode of choosing counsellors.

Mr. MARTIN of Marblehead said they were depriving the people of their rights. The people indeed, in the choice of counsellors, would have a side-wind voice through their representatives, but they ought to have more. This question was decided by a majority of fifty only, and a hundred members were absent, or did not vote, which they should have done according to the rules of the Convention. He hoped the question would be reconsidered.

The question was taken and carried for a reconsideration—224 to 134.

The question before the committee was then stated to be upon the third resolution, in the same form as if it had not been adopted.

Mr. MORTON moved to strike out the resolution reported by the select committee, and to substitute for it a resolution, purporting that the constitution ought to be so amended that counsellors should be annually chosen by the people, in such convenient districts as shall be formed by the Legislature at their next session, having regard to the number of inhabitants, and as equal as may be without dividing towns, each district to choose one counsellor, who shall have the same qualifications as are required for senators, and if in any district there shall be no choice, the vacancy to be filled by joint ballot of both houses of the Legislature; the choice to be confined to the two persons in each district who had the highest number of votes of the people—the districts thus formed to remain until a new valuation shall be taken. He made this motion because he thought it was the original intention of the constitution that the people should have a voice in the choice of counsellors.

Mr. PARKER, (President) objected to the motion, that it proposed a substitute for all the resolutions reported by the select committee, instead of one only which it had been voted to reconsider. He



suggested that the mover should confine his proposition to a substitute for the resolution voted to be reconsidered.

Mr. MORTON had no objection to taking the abstract proposition that the counsellors shall be chosen by districts.

Mr. BLAKE moved that the committee rise and report progress with a view that the resolution offered might be printed and assigned for consideration on Tuesday.

Mr. BLISS wished that before the committee rose the resolution might be amended so that the districts should be formed in the same manner with the senatorial districts.

Mr. MORTON had no objection.

Mr. PARKER. This would make ten counsellors necessary, there being ten senatorial districts.

Mr. BLISS meant only that they should be formed in the same manner, not of the same extent.

Mr. STURGIS asked if the fifth resolution had not passed.

CHAIRMAN. It has been struck out.

Mr. DANA inquired what was the question before the committee.

CHAIRMAN. Whether the committee shall rise.

Mr. DANA was against rising. He wished first to obtain from gentlemen a demonstration of their views. He was proceeding to offer further remarks, when

Mr. BLAKE asked if the gentleman was in order.

CHAIRMAN. It is not in order to debate the proposition before the committee. Mr. DANA thought it was in order to give reasons against rising.

CHAIRMAN. Observations may be made regarding the expediency of rising, but the question previously before the House should not be debated.

Mr. BLAKE stated as a reason for rising that a hundred and forty members who were present when the resolution was adopted, were now absent.

Mr. DANA gave as a reason for not rising that we might have the benefit of the observations of the gentlemen who remain.

The question that the committee now rise was taken and decided in the negative, 158 to 171.

Mr. MORTON then offered his motion, modified as follows:

*Resolved*, That the constitution be so altered as that the counsellors shall be chosen by the people.

*Resolved*, That the Commonwealth for this purpose be divided into districts.

*Resolved*, That said districts be formed by the Legislature on the same principles as shall be adopted for the choice of senators.

The first resolution being stated as under consideration, viz., "that the constitution be so altered as that the counsellors shall be chosen by the people,"

Mr. WEBSTER. The counsellors are now chosen by the people.

Mr. BLAKE was of the same opinion. Senators and counsellors are chosen by the people on the first Monday in April, and when they came together, and the counsellors are designated by the members of

the two branches in Convention, the choice is consummated. The choice is now by the people, and the Legislature only designate in which capacity each person elected shall serve, whether as counsellor or as senator.

Mr. BLISS considered that the striking out of the third resolution was an important part of the proposition. The reasons against that resolution were not all given yesterday. He was of opinion that the executive should be a co-ordinate branch of the government proceeding from the people, and independent of the Legislature. He supposed the case that the Legislature should wish to turn out the supreme judicial court. It would be in the power of the Legislature to select a council for the express purpose.

Mr. BOND of Boston thought the committee were in the same difficulty that they were in at an earlier part of the morning; and that they might be relieved from it in the same mode, if the gentleman from Dorchester would withdraw his motion, and substitute one merely to strike out the third resolution.

Mr. STONE of Boxborough said he considered this a very important question, and he should call for the yeas and nays upon it.

The CHAIRMAN said that in committee of the whole, the yeas and nays could not be taken.

Mr. BLAKE moved to divide the resolution.

Mr. MORTON said it had been decided not to be in order to divide so as to strike out merely, without substituting. He wished to determine the abstract question, and this was done by voting to strike out the resolution and to give the choice to the people.

Mr. BLAKE said that half an hour had elapsed since he moved that the committee should rise, and he felt now justified in renewing the motion. This was an important question. None more so would come up. It was a question whether we should take away from the people an important power. No one of the other reports involves so important a principle of the constitution. Many gentlemen were now gone; it was not a proper time for acting upon such a subject. This resolution was passed yesterday by a majority of not more than fifty votes. He hoped that on all subjects there would be something like unanimity. He should not be surprised if on every important question, if it were thoroughly discussed, the House should come to nearly an unanimous vote.

Mr. WEBSTER called the gentleman to order; the chairman had repeatedly decided that it was not in order to enter into debate on a motion to rise.

Mr. BLAKE then moved that the committee rise, report progress and ask leave to sit again.

The motion was carried and leave was granted.

Mr. STORY moved that when the House adjourned, it should adjourn to Monday eleven o'clock. Negatived, 144 to 176.

The House adjourned.

MONDAY, DECEMBER 4.

The House met at a quarter past 10 o'clock, and the journal of Saturday's proceeding was read.

Mr. HOLMES of Rochester said that on Saturday the Convention had ordered that from this day they would hold two sessions a day. He voted in favor of that resolution, but on consideration he thought it would promote the progress of the business better, if they would reconsider that vote, and determine to adjourn to nine o'clock in the morning, and sit each day till half past two. He therefore moved that the Convention reconsider the vote for holding two sessions per day.

Mr. PRESCOTT said that the committee on the third resolution had not finished their business—that they had held a session every day, and often to a late hour at night, and that they were now adjourned to meet this afternoon. That committee consisted of twenty-nine members, and it would be extremely inconvenient for them to finish their business if the House sat in the afternoon.

Mr. QUINCY and Mr. BLAKE stated some reasons for reconsideration, and against two sessions.

Mr. VARNUM thought that nothing would be gained by holding afternoon sessions. He should be willing to begin business at nine o'clock in the morning, as soon as all the business of the committees was completed; but he thought it could not be done at present. The motion to reconsider was then taken and decided in the affirmative—182 to 42.

On motion of Mr. BLAKE, it was ordered that the unfinished business of Saturday, in committee of the whole, be assigned to tomorrow at ten o'clock.

On motion of Mr. WEBSTER, the House went into committee of the whole on the report of the select committee upon that part of the constitution which relates to oaths and subscriptions and other subjects, Mr. DANA of Groton in the chair.

The report was then read, and the first resolution was first taken into consideration. This resolution recommends to substitute for all oaths, declarations and subscriptions now required, a short oath of allegiance, and an oath of office, with a provision that Quakers, instead of *swearing*, may *affirm*.

Mr. WEBSTER. 'It is obvious that the principal alteration, proposed by the first resolution, is the omission of the declaration of belief in the Christian religion, as a qualification for office, in the cases of the governor, lieutenant governor, counsellors and members of the Legislature. I shall content myself on this occasion with stating, shortly and generally, the sentiments of the select committee as I understand them on the subject of this resolution. Two questions naturally present themselves. In the first place; have the people a right, if in their judgment the security of their government and its due administration demand it, to require a declaration of belief in the Christian religion as a qualification or condition of office? On this question, a majority of the committee held a decided opinion. They

thought the people had such a right. By the fundamental principle of popular and elective governments, all office is in the free gift of the people. They may grant, or they may withhold it at pleasure; and if it be for them, and them only, to decide whether they will grant office, it is for them to decide, also, on what terms, and with what conditions, they will grant it. Nothing is more unfounded than the notion that any man has a *right* to an office. This must depend on the choice of others, and consequently upon the opinions of others, in relation to his fitness and qualification for office. No man can be said to have a *right* to that, which others may withhold from him, at pleasure. There are certain rights, no doubt, which the whole people—or the government as representing the whole people—owe to each individual, in return for that obedience, and personal service, and proportionate contributions to the public burdens which each individual owes to the government. These rights are stated with sufficient accuracy in the tenth article of the bill of rights in this constitution: "Each individual in society has a right to be protected by it, in the enjoyment of his life, liberty, and property, according to the standing laws." Here is no right of *office* enumerated; no right of governing others, or of bearing rule in the State. All bestowment of office remaining in the discretion of the people, they have, of course, a right to regulate it, by any rules which they may deem expedient. Hence the people, by their constitution, prescribe certain qualifications for office, respecting age, property, residence, &c. But if office, merely as such, were a *right*, which each individual under the social compact was entitled to *claim*, all these qualifications would be indefensible. The acknowledged rights are not subject, and ought not to be subject to any such limitation. The right of being protected in life, liberty, and estate, is due to all, and cannot be justly denied to any, whatever be their age, property, or residence in the State. These qualifications, then, can only be made requisite as qualifications for office, on the ground that *office* is not what any man can demand as matter of right, but rests in the confidence and good will of those who are to bestow it. In short, it seems to me too plain to be questioned, that the right of office is a matter of discretion, and option, and can never be *claimed* by any man, on the ground of obligation. It would seem to follow, then, that those who confer office may annex any such conditions to it as they think proper. If they prefer one man to another, they may act on that preference. If they regard certain personal qualifications, they may act accordingly, and ground of complaint is given to nobody. Between two candidates, otherwise equally qualified, the people at an election may decide in favor of one because he is a Christian, and against the other because he is not. They may repeat this preference at the next election, on the same ground, and may continue it, from year to year. Now, if the people may, without injustice, act upon this preference and from a sole regard to this qualification, and refuse in any instance to depart from it, they have an equally clear right to *prescribe* this qualification beforehand

as a rule for their future government. If they may do it, they may agree to do it. If they deem it necessary, they may so say, beforehand. If the public will may require this qualification, at every election, as it occurs, the public will may declare itself beforehand; and make such qualification a standing requisite. That cannot be an unjust rule, the compliance with which, in every case, would be right. This qualification has nothing to do with any man's *conscience*. If he dislike the condition, he may decline the office; in like manner as if he dislike the salary, the rank, or anything else which the law attaches to it. However clear the right be, (and I can hardly suppose any gentleman will dispute it) the *expediency* of retaining the declaration is a more difficult question. It is said not to be necessary, because in this Commonwealth, ninety-nine out of every hundred of the inhabitants profess to believe in the Christian religion. It is sufficiently certain, therefore, that persons of this description, and none others, will ordinarily be chosen to places of public trust. There is as much security, it is said, on this subject, as the necessity of the case requires. And as there is a sort of opprobrium—a marking out for observation and censorious remark, a single individual, or a very few individuals, who may not be able to make the declaration, it is an act, if not of injustice, yet of unkindness, and of unnecessary rigor to call on such individuals to make the declaration. There is, also, another class of objections which has been stated. It has been said that there are many very devout and serious persons—persons who esteem the Christian religion to be above all price—to whom, nevertheless, the terms of this declaration seem somewhat too strong and intense. They seem, to these persons, to require the declaration of that *faith* which is deemed essential to personal salvation; and therefore not at all fit to be adopted by those who profess a belief in christianity, merely in a more popular and general sense. It certainly appears to me that this is a mistaken interpretation of the terms; that they imply only a general assent to the truth of the Christian revelation, and, at most, to the supernatural occurrences which establish its authenticity. There may, however, and there appears to be, *conscience* in this objection; and all conscience ought to be respected. I was not aware, before I attended the discussions in the committee, of the extent to which this objection prevailed. There is one other consideration to which I will allude although it was not urged in committee. It is this. This qualification is made applicable only to the executive and the members of the Legislature. It would not be easy, perhaps, to say why it should not be extended to the judiciary, if it were thought necessary for any office. There can be no office, in which the sense of religious responsibility is more necessary than in that of a judge; especially of those judges who pass, in the last resort, on the lives, liberty and property of every man. There may be, among legislators, strong passions, and bad passions. There may be party heats and personal bitterness. But legislation is, in its nature, general. Laws usually affect the whole society, and, if mischievous or un-

just, the whole society is alarmed, and seeks their repeal. The judiciary power, on the other hand, acts directly on individuals. The injured may suffer, without sympathy, or the hope of redress. The last hope of the innocent, under accusation, and in distress, is in the integrity of his judges. If this fail, all fails; and there is no remedy on this side the bar of heaven. Of all places, therefore, there is none, which so imperatively demands that he who occupies it should be under the fear of God, and above all other fear, as the situation of a judge. For these reasons, perhaps, it might be thought that the constitution has not gone far enough, if the provision already in it were deemed necessary to the public security. I believe I have stated the substance of the reasons which appeared to have weight with the committee. For my own part, finding this declaration in the constitution, and hearing of no practical evil resulting from it, I should have been willing to retain it; unless considerable objection had been expressed to it. If others were satisfied with it, I should be. I do not consider it, however, essential to retain it, as there is another part of the constitution which recognizes in the fullest manner the benefits which civil society derives from those Christian institutions which cherish piety, morality and religion. I am conscious, that we should not strike out of the constitution all recognition of the Christian religion. I am desirous, in so solemn a transaction as the establishment of a constitution, that we should keep in it an expression of our respect and attachment to christianity;—not, indeed, to any of its peculiar forms, but to its general principles.

Mr. PRINCE of Boston observed that as he was unused to public speaking, and engaged in pursuits of life which had in a great measure excluded him for participating in the affairs of legislation, he trusted in the candor and kindness of the House, if, in the discharge of what he considered an imperative duty, he should not be fortunate either in the previous arrangement of his ideas, or afterward in the manner of expressing them; and, that the few observations which he should venture to make, would not from their want of merit be severely censured by those who could not approve them. Indeed, a consciousness of his inability, would induce him rather to state general axioms than to attempt to discuss and expatiate at large upon the subject under consideration. There are, said Mr. P., two distinct rights belonging to man—UNALIENABLE and NATURAL—among those of the first class are the rights of conscience in all matters of religion. Now I hold that religion is a matter exclusively between God and the individual; and “the manner of discharging it, can be directed only by reason or conviction; and thus, I repeat it, this right is in its nature an *unalienable right*, because it *depends on the evidence* as it strikes his mind; and consequently the *RESULT is what is his duty towards his Creator.*” And therefore, as man owes supreme allegiance to God, as the Creator, and as the undivided governor of the universe, he cannot absolve himself, nor can others absolve him from this supreme allegiance; and hence, on entering into a social compact, the rights he gives up, and the powers he

delegates must be tributary to, and in subordination to this high and first allegiance—and among the first enumeration of rights and duties in the present constitution of the Commonwealth, this principle is recognized: “It is the duty and the right of all men (says the constitution) to worship the Supreme Being, the great Creator and preserver of the universe, and none shall be molested or restrained for worshipping God in *the manner* and season most agreeable to the dictates of his own conscience, *nor* for his religious professions or sentiments.” This is reasonable, wise and just. In forming or revising the social compact, let us then take heed, that we do not insert or retain any principle which by *possible construction* may interfere with, or abridge such sacred, such inestimable rights by an inquiry into opinions for which man is only accountable to his God. Social duties are between man and man. Religious duties are between God and the individual. While we are solicitous to “render unto Cæsar the things that are Cæsar’s”—take heed, I beseech you, that “you leave unto God, the things that are God’s.” Nor will the argument hold good that because during the forty years the test has been engrafted into and been in force under the present constitution, no extensive evils have presented themselves, and therefore it is inexpedient to expunge it from the constitution, lest it might be construed as an indirect abandonment of the cause of christianity. On revising the constitution, every unnecessary point, *even the most trivial*, ought to be stricken out, and every possible evil guarded against. The American revolution fully recognizes this principle;—it was not the pressure of evils actually existing which induced the patriots of the revolution to resist the encroachments of Great Britain, but it was a dread of the consequences which they believed would result from submitting to the doctrines advanced by the mother country—hence, I repeat it, it is not from the multiplicity of cases which have occurred, whereby men of sterling integrity, pure morals and great strength of intellect *may* have been precluded from participating either in the advantages of office, or assisting in the public councils, but it is that by continuing this principle in the constitution *you may* preclude them. I add moreover, that though many *positive* instances are not known, yet there may have been many negative ones from the religious qualification alluded to; if I have been rightly informed this qualification has not only had a tendency to prevent moral and intelligent men from office, who may or may not have been Christians, but sir, ere the ink which was used to record the qualification in the instrument was dry, one of our most distinguished citizens, and a most enlightened and prominent patriot, (I mean Mr. Hawley) a professing member of a Christian church, disdained to hold a seat at the senate board on the condition that he should submit to make a public acknowledgment of his religious sentiments, other than at the altar of the Most High God, although his zeal in support of the cause of christianity almost bordered on an undue enthusiasm. How many Christians actuated by similar considerations have with-

held their useful talents in favor of the Commonwealth I pretend not to state, but I should think *even this one* sufficient to erase this qualification, "for, if all men are free, equal and independent by nature, and the right of conscience is unalienable, then, on entering into the social compact, every man has a right to enter *on equal terms*; but, if the consciences of men are in any wise shackled by *forms or qualifications*, this would not be the case." I submit then the following positions, first, admitting the right, (which, however, I do not) of the citizens when forming a social compact to prescribe such terms as a majority may deem expedient and proper, yet I hold it to be unjust to introduce a principle into the compact which, while it provides that the individual shall afford his personal aid, and risk his life for the common defence and yield up all his property (if need be) for the maintenance of the government and its laws, yet virtually precludes him from participating in any of the advantages resulting from offices, or from any share in the administration of the government, because he differs on a subject with which society has but a doubtful right to interfere; although in point of morality and strength of intellect he shines as "a star of the first magnitude." Secondly—I hold that this act of injustice toward the individual is neither politic nor expedient; first, because as before observed, it may deprive society of talent and moral excellence, which should always be secured and cherished as one of the best means of preserving the prosperity of the Commonwealth; and secondly, while it may thus exclude men possessing such useful and amiable qualification, yet it is no effectual safeguard whereby to keep out ambitious, unprincipled men from office, or a seat in the public councils. And, I moreover hold, that the cause of christianity doth not require such a qualification to support it. This religion is founded on a rock and supported by a power which humanity cannot affect,—it does not want the secular arm to defend it—its divine origin, and its own intrinsic merit, ever have been, and ever will be, its firmest support. What have the powers of the world to do with such a religion? Experience has demonstrated that when left to the umpire of reason and of argument, it has triumphed the most brilliantly over the attacks of infidelity. Inquisitions, test acts and fanaticism, with their gibbets—their racks—and their faggots, may produce martyrs and hypocrites, but such writers as Watson and Paley have displayed its true character by arguments, which have put infidelity in the entire back ground. And may I not add from experience that in those countries where there are religious tests, they have not been productive of any advantage; even in that nation from whom many of us derived our origin, and where, in addition to a test act, the most solemn of the Christian ordinances are obliged to be adhered to as an additional qualification for office.—there is either an almost total evasion, or the compliance is often made under circumstances which, while it gives pain to many a serious Christian, excites mirth in the breast of every infidel. I also believe the qualifications of candidates ought to be confided to



the electors, who generally take them from the neighborhood, and will therefore be the best judges of their moral and mental powers, and should it unfortunately happen that an unfit citizen has been introduced into office—the electors, so long as virtue, patriotism and christianity predominate, will avail themselves of the frequency of elections to obtain a remedy by a change of character; and that the evil will be much sooner remedied than if it is left to be done through the crucible of a test act. I moreover think, that while the scriptures seem to reprobate the presumption of demanding, and the fallacy of trusting, to mere professions of faith, they plainly point to the policy of preferring a trust in moral worth and excellence. Who art thou, O man, that judgest another? With his own master he is to stand or fall. “These people draw nigh to me with *their mouths*, but their hearts are far estranged from me.” “Not every one that saith Lord! Lord! shall enter the kingdom of heaven.” But Peter, speaking under the impulse of an awful rebuke and a solemn monition from heaven against his bigoted views, declared, that he now was satisfied, God was no respecter of persons, but of every nation, “he who *feared God and wrought righteousness*” would be accepted, whether Jew or Gentile. And surely man, fallible man, ought not to require from his fellow man other and greater qualifications for an earthly office, than is required from him, by whom kings reign and princes decree justice, for an admission into the society of just men made perfect. No, sir, the qualifications for those celestial abodes depend not on principles which in their tendencies may work an abomination, or may produce a falsehood. They depend on the performance of moral and social duties. He that hath from pious and benevolent motives fed the hungry, clothed the naked, and visited the widowed and the friendless in their distress and administered to their comfort and relief, though he may never have made a declaration of his religious creed, will be invited and welcomed by the heavenly messenger to enter into and partake of the joys of *his* Lord. It has been said that the Christian religion is calculated to soften the manners and purify the mind, and thereby produce *more reverence* toward the government, and a prompt and ready obedience to the laws. This I will admit—but I repeat it with this reservation, that those advantages result from its moral precepts, and not from doctrinal points. I will not say that the omission of a religious test in the constitution of the United States, or of the individual states, with, as I think, the exception of Vermont, Delaware and Maryland, ought to operate as a sufficient reason for us to erase it from ours; but I would ask whether in those states you perceive among their citizens greater reverence for the laws, more marks of morality, or a greater display of Christian devotion and benevolence, than in those states which have none? In making the foregoing observations, I hope it will not be considered as in any manner intending to weaken the cause of christianity or of aiding the cause of infidelity. I make them because I verily believe, in forming or revising the social compact,

we ought wholly to exclude every principle which by possible construction may interfere with the consciences of men, thereby leaving them and their religious opinions *where alone they ought to be left, "to Him who searcheth the heart and knows our inmost thoughts."* Whether the individual has or has not formed a correct religious opinion is nothing to us, as civilians.

"For modes of faith, let graceless zealots fight,  
His can't be wrong whose life is in the right."

Indeed, sir, I think that so far from injuring of the Christian cause, I am aiding it—when doubting men are left to the freedom of their own wills, they will be the more apt to listen to the arguments in support of christianity than when shackled by test acts, or any other interference of the civil government. I will further lastly add, that this was the opinion of some of our most able divines and our most enlightened statesmen, when assembled for a purpose nearly similar to this for which we are now in session—they decidedly declared that test acts were improper and inexpedient to be inserted in the social compact. Such were the opinions of the Rev. Messrs. Shute, Backus, Payson, and Thatcher, and also of the late learned Chief Justice Parsons—and I would not forget to mention the late pious and amiable Dr. Belknap. Believing then sir, as I verily do, that to retain any religious test, however liberal, is neither required for the safety of religion, nor for the safety of the Commonwealth; that it is unjust in principle—fallacious as to the effect to be produced—pernicious in its consequences—and an unwarrantable assumption of the unalienable rights of a citizen, and also that it is repugnant to one of the most essential moral precepts of christianity which inculcates, "that whatsoever I would that men should do unto me, *this* I ought to do unto them;" I hope the principle to which I have alluded will be left out of the constitution, now that we are called to revise it.

After Mr. PRINCE sat down, the CHAIRMAN said, that as the organ of the committee, he would observe, that it was contrary to the rules of deliberative assemblies to read written speeches.

Mr. QUINCY differed from the chairman. He said it was a right, which every member should be permitted to exercise.

Mr. WEBSTER said the gentleman was out of order, as there had been no appeal from the decision of the chair.

Mr. QUINCY said then he did appeal.

The CHAIRMAN said he did not mean to make a decision, but a suggestion merely.

Mr. J. PHILLIPS of Boston observed in substance, that from the observations of the chairman of the select committee, it appeared evident that the citizens of this Commonwealth had the right to require of their rulers, the declaration now provided in the constitution. It should be constantly recollected, that it is the business of this Convention to propose amendments to the existing, and not frame a new, constitution. He did not believe the citizens of this Commonwealth were prepared, by erasing from this instrument this

declaration, virtually to express an opinion, that it was indifferent to them whether their rulers should be Christians or the followers of Mahomet. Had this declaration required the belief of the doctrines of Calvin, or Arminius, or of any founder of a sect, he should concur in rejecting it; but he did not expect at this period in a Christian community, that any objection would be made to these words, "I believe the Christian religion, and have a firm persuasion of its truth,"—being all that the constitution requires. One class objects to this declaration, on the ground that it is inconsistent with the rights of a citizen to require any evidence of his religious belief. Why then retain that part of the report which requires an appeal to the Supreme Being—the oath of office? There may be found, he hoped it never would be the case, persons elected to the Legislature who disbelieved the existence of God. If the argument is correct, to require this oath is inconsistent with their rights, he inquired if it could be now a subject of doubt whether the inhabitants of this Commonwealth professed to be a Christian people? But it had been intimated by the chairman of the select committee, that some objected to this declaration because they considered it could not be made with truth, by any, except those highly favored persons who have attained to the full assurance of their interest in the Savior. This was new to him, and he should wish to hear those who entertained this opinion, offer the arguments on which it is grounded. At present he should only express his desire that the subject might receive the most deliberate attention.

Mr. HUSSEY of Nantucket had observed, with much satisfaction, that the committee had recommended such an alteration of the constitution as would enable the people of the Commonwealth to avail themselves of the virtues and talents of the denomination of Christians called Quakers, who had heretofore been excluded from holding important offices, because they could not conscientiously take the oath required for entering upon these offices. He knew many whose qualifications were of the first order, who had heretofore been thus excluded. He believed that, besides those who belong to this denomination of Christians, there were many other good citizens of tender consciences who held themselves bound by the literal import of the injunction in scripture, "Swear not at all," who would still, by the terms of the article as proposed to be amended, be excluded from office. He therefore moved to amend the resolution by striking out after the word *Quakers* the words "and shall decline taking said oath," and inserting, "and any other person who cannot by the principles of his religious faith take an oath, and shall decline taking the same."

Mr. WEBSTER said that this particular subject had been referred to the select committee and they had made a report upon it. He suggested that it would be more proper to enter into consideration of the amendment proposed, when that report should be taken up.

Mr. S. A. WELLS requested that the resolution might be read.

The CHAIRMAN was proceeding to read the several resolutions of the report of the committee, not having understood the gentleman who called for the reading.

Mr. ADAMS of Quincy moved that the report should be taken up paragraph by paragraph ; it was impossible for gentlemen to act understandingly on the whole together. He said they should take it up link by link ; if a link was found defective, it should be broken, and those which were perfect should remain.

Mr. NICHOLS of South Reading said he doubted, if the motion of the gentleman from Nantucket should be withdrawn, and the present resolution adopted, whether the subject of the motion could come before the committee on the other resolve. He asked for information.

The CHAIRMAN said he had no doubt at all, that it could.

Mr. TUCKERMAN of Chelsea observed that he supposed the question now before the committee to be, whether the religious test in the constitution of 1780, shall be retained, or whether the resolutions now proposed by the select committee shall be adopted. He observed that, at the hazard of being accused of bigotry, and narrowness of mind, he must take the ground of defence of the constitution on this subject, as it now stands. He said that, in reflecting upon the test, he had not anticipated the suggestion of any doubt concerning the *right*, should this Convention have the disposition, to retain it. The constitution declares every man to be eligible to all the high offices of the State, on the condition of certain prescribed qualifications. Yet if there was any probability that any people of color would be elected to fill either of these offices, he presumed that no doubt would be felt, either as to the right, or the propriety, of their exclusion. There would, without doubt, be a provision in the constitution for their exclusion ; or, it would be required, that these offices should be holden only by the white inhabitants of the Commonwealth. And if, as is without doubt a fact, ninety-nine out of a hundred of the people of this Commonwealth are in their faith Christians, it seems to be as unquestionable as any one of the rights of a people, to require that their rulers shall, in their faith, be Christians. The argument of the honorable chairman of the committee on this subject, was very simple, but very complete and satisfactory, that if two candidates for an office be before the public, every individual had a perfect right to vote for one because he is a Christian, and not to vote for the other because he is an infidel. And if every individual have this right, the great majority of Christians in the Commonwealth have as clear, and full a right, to make faith in the Christian religion a prerequisite of office. He would say no more on the subject of the *right*. He thought that, on no good ground, it could be contested. The great questions then on the subject regard the *expediency* of abolishing the existing test, and the *propriety* of the substitution proposed in the resolution. On the question of giving up the test, he remarked, that an argument for its abolition was, that the State would thus obtain, in its high and important offices, the talents of a few men, who do not believe the Christian religion. He replied, that during forty years in which this test has stood in our constitution, we have never wanted men, in sufficient

abundance, for all the offices in which it is required. And that no apprehension can be felt, whether we shall continue to have candidates enough, who will not shrink from the test, for every department of government which they can be called to fill. The test is so very broad, that it excludes no one of all the denominations of Christians. He remarked, that we should be exposed to much confusion and error on this subject, if we should consider the test now required, as having any relation to the very objectionable tests which have sometimes been required. The test established by the English constitution, for example, required a belief of the thirty-nine articles of the church of England. He would resist, with all the energy of the small powers that he possessed, any definition in the constitution, of what christianity is, as a faith to be required of those who may be elected to office; and had he not heard the suggestion of the honorable chairman of the select committee, that there were gentlemen in that committee who thought that a solemn declaration of belief of the Christian religion could be made by those only, who were assured also of an eternal interest in the promises of our religion, he should have thought that every man, who had been convinced by evidence of the truth of this religion, and who felt the divine authority of its doctrines and precepts, would conscientiously have made this declaration. He respected the opinions of gentlemen, who gave this construction to the language of the test; though he could not think the language to be fairly susceptible of this import. As he understood the declaration, it implied only that belief, which is a security to the people, that their rulers receive the great fundamental principles, which are the best security of good laws, and of a good administration of government. He said that, in his view, the most beautiful feature of those parts of our present constitution, which concern religion, is, that it recognizes christianity as the religion of the State, in the great principles in which its various sects agree; leaving unnoticed those in which they differ. Any man therefore, he thought, who believes that christianity is a divine revelation, can make the declaration now required, and comprehend in that declaration, all that it is intended to embrace.

On the question of the *propriety* of abolishing the test, he said, his objections were still more solemn. Either the religion of Jesus Christ is from God or it is not. Either we are accountable to God for all our means and opportunities of advancing the interests of this religion, or we are not. If our religion be from God, and if it be our duty, by all means which are consistent with its spirit, to promote its progress, it is a question on which we ought to pause, whether we shall open the door of office indiscriminately to those who believe, and to those who reject, this revelation of God's will. We all know the descending influence of example. If men should be elevated to high and responsible stations, who are enemies of christianity, may we not look with some apprehension to the consequences? Sir, if this test had not been established in 1780, I am not certain that I should now have been disposed to advocate it; I

might have felt a sufficient security in the election of Christian magistrates without it. But it has now become associated with the sentiments, and habits, and feelings of forty years; and if you now remove it, you declare to the people, and they will not misunderstand the declaration,—that you do not deem it to be of importance that our magistrates should be Christians. Changes which affect long established associations should be made very cautiously. The gentleman from Boston cites to us the words of our Lord, *render to Cæsar the things that are Cæsar's*; I hope that we shall feel the importance of the precept. But my New Testament does not add, “leave to God the things that are God’s.” I am told to *RENDER to God the things that are God’s*. And, sir, we owe it to God, to Christ, and to our own souls, to do what we may for the extension and security of our faith as Christians; and to give our influence, whatever it may be, to the election of magistrates, who will make laws, and administer justice, in the spirit of christianity. On these grounds I am opposed to the resolutions of the committee; and wish that the test, from which no inconvenience has yet been experienced, may be retained in the constitution.

Mr. DEARBORN of Roxbury regretted that the subject of religion was introduced into that body, but since the gates of the temple were thrown open he should with hesitating awe enter in with the multitude, and he hoped he should come out without having committed any offence which should destroy his hopes of happiness in a future world. He said he was well pleased with the report of the committee, and trusted there was sufficient liberality in these enlightened days to sanction the amendment proposed to be made by it in the constitution. It was a lamentable fact, that our ancestors, who fled to this country to enjoy freedom of religion, brought with them the spirit of religious intolerance. We were however to look for their excuse in the history of their times. Of the constitutions of the several United States, those of this State and of Maryland were the only ones which were marked by bigotry and ecclesiastical intolerance. This was owing to peculiar circumstances existing at the time of their adoption. These circumstances are passed away. At the present time, this test was an unjust exaction and a violation of the unalienable rights of the people. He referred to the opinion of the learned, pious and illustrious Locke, that it was not the business of religion to interfere with the civil government. It was an established principle that acts, not opinions, were the subject of laws. Political opinions were not subject to a test; why should those upon religion be subject to any? They had no right to compel a man to throw open the portals of his mind and discover his religious sentiments. He trusted such oppression would not prevail in this free and enlightened country. There was no authority for it in the scriptures, and it was not until the third century that persons raised to civil offices were required to believe in any particular religious creed. He had heard it said that this test will exclude immoral and wicked men from office. He asked, if such had been

the effect of tests in other countries. On the contrary, he thought the tendency of them was to exclude the good and conscientious only. The offer of a sceptre had induced princes to cross themselves, or to throw off their allegiance to the pope, just as suited their views of aggrandizement. It would be said that other nations have religious tests. He believed that many of the nations of Europe had discarded them, and in Great Britain he said the test act was a blot in their statute book. It was passed in times of political division, and was intended to operate against the papists, but it was found to apply equally to protestant dissenters, and it was after a long time and many trials in parliament, that the protestant dissenters were able to obtain relief. In England, a man now goes to take the sacrament, not to repent of his sins, but because he is chosen first lord of the treasury. A measure being adopted by a great nation was no proof of its wisdom or utility. The declaration of independence which proclaims, and the constitution of the United States which prescribes our rights, require no test; and he could see no reason why a test should be required by our State constitution. (The above is but a sketch of the gentleman's argument; we do not pretend to do justice to his language.)

Mr. HUBBARD of Boston said that what with the sermon of the gentleman from Boston (Mr. PRINCE,) and what with the elaborate oration of the gentleman from Roxbury, (Mr. DEARBORN,) he did not know how the remarks he should offer would be received by the committee; he differed however from both of those gentlemen in his views of the present subject. He held with the chairman of the select committee, (Mr. WEBSTER,) that the people had a right to require, if they thought it expedient, of their officers a declaration of belief in some religious system. As we were a Christian people, we had a right to insist that our rulers should declare their belief in the same religion. The right of exacting this declaration stood on the same ground as the right of exacting an oath of allegiance, or oath of office. Gentlemen had said this requisition was depriving men of their unalienable rights. He did not agree with them. The right to be elected to office was not an unalienable right. It affected neither a man's life, liberty nor conscience. The question then is, is it expedient to require this declaration? This question was probably agitated when the constitution was made; and he would ask, have circumstances changed since that time? We were a Christian people then; and are we not now? And do not the same reasons continue for supporting the Christian religion? He said they were sent there to see what amendments to the constitution were necessary. He denied that it would be an amendment to admit a mahometan, or a deist, or a jew, to hold an office over a Christian people. He had learned of but two persons, Major Hawley and one since, who had ever objected to making the declaration required by the constitution. He thought there would be inconvenience from striking out this declaration; that it would be a disrespect to our fathers, and a national sin. The third article of the

bill of rights was at present a part of the constitution. If then it is required to support the Christian religion, was it not wise to have Christian rulers? Was it wise to commit our religion to the care of enemies? He did not see the policy of striking out the declaration, nor had any sufficient reason been shown in favor of that proceeding. The evils mentioned by the gentleman from Roxbury, arose from sectarian tests; yet, however impolitic the test act of Great Britain might be considered, there was no country where there was better morality or sounder religion. He concluded by moving to amend the report by adding to the first resolution the following words, being the same as are now contained in the constitution, viz.: Any person, chosen governor, lieutenant governor, counsellor, senator or representative, and accepting the trust, shall, before he proceed to execute the duties of his place or office, make and subscribe the following declaration, viz., "I, A. B., do declare, that I believe the Christian religion and have a firm persuasion of its truth."

Mr. AUSTIN of Boston observed that it appeared to be the gentleman's object to amend the resolution by inserting in it what the committee had proposed to reject. He hoped that his motion would not prevail. It was to retain in the constitution a provision inserted forty years ago, which the greater liberality and intelligence of the present day would not have introduced. If it is an error in the constitution we ought to correct it. It required that certain officers, omitting certain others without any reasons for the distinction, should make a declaration of their religious belief as a qualification for the office. He did not agree with the chairman of the select committee who reported the resolution, that we had a right to demand this qualification. On the contrary he held that we had no right to demand it—that every one who contributes to the expenses of government and bears his share of the public burthens, has a right to be a candidate for popular favor. This was the general rule. He admitted there were exceptions. We have the right to demand the qualifications of age, property and residence, because they are necessary to insure the proper performance of the duties of the office. But this qualification related to opinions which do not bear upon the duties of government and are not connected with the public safety. This was the distinction—if we pass this line there is no place to stop. No one would say that a belief in christianity was indispensable in legislators. If the laws would not be well made—if the government could not be carried on—if society would be in danger without a declaration of belief in the doctrines of christianity, then this would be within the exceptions to the general rule. But it is argued that although it is not necessary for the preservation of civil society, it is necessary to show our respect for the institutions of christianity. The first is a legitimate purpose, the other an unlawful one. If it was agreed that it was proper that all those who held public offices should believe in the Christian religion, he was willing to say that he held in little respect the judgment of any one who in the present enlightened state of society, and with the present



means of information, should not be satisfied with the evidences of christianity, and still less the integrity of any one who should disbelieve without examination. But this was merely his opinion as an individual. And who should judge the people—it is their right—let them judge—give them means of information. But place him who believes, and him who sneers at religion, side by side as candidates for office, and let the people decide between them. They may be trusted to decide correctly. This is the theory of our government. He proceeded to the question of expediency. Has the test a good tendency? The test was relied upon as a security, and the people have sometimes been imposed upon, because they supposed that the government would look to the object. But the test was evaded, and the laws brought into contempt. The Christian religion needs not oaths and tests to protect it any more than it does force. Its empire will be maintained and extended by neither the one nor the other, but the only aid which can be given to secure its triumph, is the diffusion of knowledge. It was argued that the test being a part of the present constitution, it ought not to be taken out. By taking it from the constitution we no more violate the principles adopted by the framers of this instrument, than they violated principles previously established. In 1631, it was ordained that no one should be a freeman, and have the right of voting, who was not a church member. This he contended was the true theory if we would have a religious test. We should go to the source—stand at the ballot box, and as each individual came with his vote in his left hand, require him to hold up his right, and swear to his belief in the Christian religion. This was the system of our ancestors, but it was afterwards abolished, and in 1651 they adopted a stricter rule of exclusion. They required that the voter should not only be a member of the church, but should believe in the Christian religion, as it was proclaimed by the orthodox writers of the day. At the time the constitution was adopted, by a belief in the Christian religion was meant an adherence to the orthodox church of the day. This interpretation would exclude very many whom at the present day gentlemen would not exclude. By taking out this provision of the constitution, we adopt the spirit of those who framed that instrument. It was not very discreditable to them, if, after forty years' experience of the test, it should be found inapplicable to our present condition, and he did not think that in rejecting it we should show any disrespect to them or to religion itself. We only say it is unnecessary to mix the affairs of church and state.

Mr. FOSTER of Littleton said that as he was on the select committee, he felt more disposed to make a few remarks on the present question, than he should otherwise have done. In some of the speeches which had been made, there appeared to him to be more of declamation and fancy than solid argument. He did not know that the views of gentlemen were not correct; he could only say they were not his own. He said there was a great influence in words—some of them had a bad sound. Such was the word *test*;

and from the arguments he had heard, he should suppose that religion was not a harmless thing ; so at least they struck his mind. What is this test ? not what it is in other countries ; it is a simple declaration of belief in christianity. The gentleman from Roxbury had said a great deal in very intelligible and forcible language, about sectarian persecution in other nations, and brought them home to our own country. But this declaration had no more to do with the persecuting spirit of our ancestors, than with the witchcraft of Salem. We live in a more enlightened age, and it is owing to the diffusion of the knowledge of christianity. This declaration has nothing to do with particular doctrines—we ought not to abolish it because there are different opinions. The gentlemen have no objection to the declaration themselves. They all believe in christianity ; it is only for the benefit of some imaginary characters that they are so solicitous. There have been only two persons known who have stumbled upon this stumbling stone. One in Northampton, now dead, and the other—he must not mention names—but the chair would know and the committee would know. The first was a conscientious man, a believer in christianity and a member of the church ; and yet he could not make this declaration, because it was required by the constitution. If this was not fantastical, he did not know what was. If he were living, perhaps he might explain. Gentlemen seem to say, that it is well to be religious at home ; we will be very good in our private capacities, but when we come here, don't say a word—when we are placed in an elevated situation, and can do good by our example. When your candle is lit, put it under a bushel, not on a candlestick. He would go farther. There is at this day an unusual zeal for the diffusion of christianity, even for extending it beyond our own country. But if it is so mischievous a thing at home, why send it to other countries to spoil them ? When some think the millenium is coming, they say, put away all the Christian religion. He concluded by appealing to our own experience under the constitution. If there was a land on earth where toleration was enjoyed in its fullest extent, it was America ; and nowhere more completely than in the Commonwealth of Massachusetts. He hoped the declaration would continue to make a part of our constitution.

Mr. S. A. WELLS said that he had the honor of being upon the committee which reported the resolve that is now under consideration ; that he approved of and voted with the majority. But his conclusion was drawn from very different premises from those which had been laid down and stated by the gentlemen who were of the same opinion as he. They deny the right in the people to prescribe any such condition as a test, to those whom they should select as their rulers. This right in the people, he said, was in his opinion clear and indisputable. The people undoubtedly have the right to institute such form of government as they conceive to be best calculated to secure their peace and happiness ; the people are the majority, and if this majority is composed of Christians, and

conceived that their security and happiness required that their rulers should also be Christians, they had an undoubted right to prescribe as a condition, that their rulers should testify to their belief in the Christian religion. The advocates of the resolve, which prescribes an oath of allegiance, when they deny the right of the people to annex this as a condition of office, because it violates the right of conscience which is unalienable, involved themselves in a *dilemma*; for if it be an interference in the right of conscience to require that persons who may be chosen by the people to certain offices shall swear to their belief in the Christian religion, it must also be an interference in the right of conscience, to require that they shall swear by the name of God himself: and what right then, have they to require a declaration in this form any more than in the other. If the people have the right of establishing government, they have the right of establishing such form of government as they may think best calculated to promote their security and happiness, whether it be a republican, monarchical, or aristocratical, or even a hierarchy. After it shall be established, nobody will doubt their right to require an oath of allegiance by those persons who may be selected to administer it. If then, it be a republic, and one of the minority who is in favor of one of the other forms, is elected to office, and cannot or will not subscribe the oath of allegiance, he, according to the arguments of the gentlemen who deny the rights of prescribing conditions, is deprived of his right as a citizen, or is disfranchised. The right of prescribing a religious test is equally clear as the right of prescribing a political test. The Convention that framed our present constitution, in wisdom, learning, and patriotism, and a knowledge of the rights of man, was not inferior to this. I shall be very unwilling therefore, that this Convention should sanction an opinion by which that enlightened body of men should be declared either ignorant of the right of the people, or that they knowingly violated it. He said that he was in favor of the resolve, because he was not settled in opinion that it was expedient that such a condition for office should be required, as that which it is proposed to remove. He felt satisfied that in another part of the constitution sufficient provision was made on the subject of religion. He alluded, he said, to the third article in the bill of rights. It was to this he looked for all those benefits which society were to derive from the public worship of God, and from a general diffusion of piety, religion and morality. This would make a Christian people, if anything would, and consequently we may expect that the people would elect none to office who are not Christians. He might, he said, bring forward additional arguments in favor of this opinion, but did not judge it necessary. He however would not conclude without making a few remarks on the observations of the gentleman from Roxbury, who denied the right in the people to require that their magistrates should subscribe a religious test. As an extenuation, I presume, of the crime of violating the right of conscience of which the great men who framed the constitution of 1780 were

guilty, he said, that they acted under the influence of those religious prejudices, which made a part of that government of which they had declared themselves independent. I had thought that the gentleman was acquainted with the history of his own country, and the character of those wise, learned and patriotic men. No one can know much of their characters, who will assert that they were under the influence of any such prejudices, either civil or religious: if it had been so, we should not probably be in possession of the civil and religious privileges which we now enjoy.

Mr. STONE of Boxborough said he hoped the amendment to the resolution would be adopted. He was aware that religion was an affair entirely between the creature and his Creator, and that government could prescribe no forms to be observed that should supply the place of it. But he thought that some religion was necessary in every community; that it ought to be recognized in the constitution of government. Some religion is recognized, and makes a part of the law of every country. It forms the criterion of right and wrong. It supplies to a great extent the place of law—without it we should have no principle by which in many things we should be governed. Many laws suppose the existence and acknowledgment of a certain system of religion. Laws are established that require the observance of the Sabbath. This is a distinct recognition of the Christian religion. It would be unjust towards the Jews who observe a different Sabbath, unless we have a right to recognize one religion in preference to another. Without religion we have no standard for governing the conduct. Gentlemen may say that reason should be our guide. It is no guide—it sometimes directs one thing, sometimes another; it is not to be trusted without the aid of religion, and some general system should be recognized by the government. A particular system was not wanted; they had been in other countries the cause of bloodshed and numerous evils. But some general system was demanded and he hoped the amendment would be adopted.

Mr. WILDE of Newburyport had had some difficulty in forming an opinion on the question, and his mind was not now entirely free from doubt. He should, however, offer a few arguments, and attempt to explain the ground of the opinion which he had adopted, and the vote he should give. He should not at this late hour go fully into the argument of a question which had been so fully discussed; but merely state a few of those which appeared to have the greatest weight. He first considered the question whether the people have a right to require from their rulers any religious qualification. He thought this right beyond all doubt. The people are the source of the sovereign power. It is an attribute of sovereignty to use all means necessary to promote the public good, provided they do not interfere with the laws of God, or the inalienable rights of individuals. To require this declaration does not interfere with the rights of conscience. No person has any conscience about becoming a legislator. He is not obliged to accept of

office, and he has no right to claim it. The constitution reprobates the idea that any individual has a right to office. It is expressly declared in the bill of rights that "the idea of man born a magistrate, lawgiver, or judge, is absurd, and unnatural." It depends on the will of the people what qualifications they will require for those they elect to office. This doctrine was already illustrated by the chairman of the select committee who opened the debate. They not only have a right to elect whom they see fit, but they have a right to decide now by a general rule, what qualifications they will demand. It may be objected, that we ought not to bind posterity. This objection is not sound. For every form of government is intended to bind posterity. He proceeded to inquire whether it is expedient to retain the test. It is contended, that to reject it, would be an encouragement of infidelity, and an expression of the opinion of the Convention, that we have no respect for religion. If he thought that the alteration would have this effect, it would be an unanswerable argument; but he doubted whether it would have this effect. If all the articles relating to religion were to be struck out it might be so. But other parts of the constitution will contain an ample expression of our respect for christianity. In the twenty-third article of the bill of rights, the duty of public worship, and of supporting the institutions of religion, is fully expressed. Those articles, he trusted, would in substance be retained, and they would contain an ample expression of opinion in favor of religion, and of the obligation to support it. He knew there were different opinions, and it was difficult to reconcile them, unless all in the spirit of conciliation were disposed to yield something. In this spirit, although he saw no important reason for rejecting the test, he was willing to relinquish it. He did not see the necessity of retaining it, though he could well suppose the case when it might be necessary. If Christians were a bare majority in the Commonwealth, it would be right, because it would be necessary for the preservation of the religion. But there was now nothing to fear. There would be no inconvenience in giving up the test. He had known few instances in forty years experience in which it had been of any effect. Cases may arise in which it would have an effect, but the number must be small. There may be those who have a general belief in christianity, and who yet hesitate to express it in so strong terms as are required by the constitution. It is possible that there may be well disposed and conscientious persons who hesitate in declaring their belief in everything recorded in the Scriptures, and whom yet it would not be desirable to exclude from office. It has been stated also, that there are others who put an interpretation upon the terms of the declaration much more strict than was intended. As he did not conceive that in the present state of the community, such a declaration was necessary; as it was important, not only that we should have good laws, but such as the greatest number of the people will be satisfied with; he thought it might be expedient to reject it. He had not the least objection to any part of it, but he was

willing to give up something for the purpose of meeting the views of others.

The committee then rose, reported progress, and had leave to sit again.

Mr. PERLEY of Boxford had leave of absence on account of ill health.

The House adjourned.

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**TUESDAY, DECEMBER 5.**

The House was called to order at 10 o'clock, and attended prayers made by the Rev. Mr. Jenks ; after which, the journal of yesterday's proceedings was read.

Mr. RICHARDSON of Hingham said he had a resolution which he wished to offer to the Convention. He had been well pleased with the motion which the gentleman from Boston, (Mr. WEBSTER) intimated that he should make, to have the resolution which formed the subject of yesterday's debate, lie on the table until the committee which had under consideration the third article of the bill of rights should make their report, in order that both subjects should be referred to the same committee of the whole.

The PRESIDENT told the gentleman he must make some motion, to serve as a foundation for his remarks.

Mr. RICHARDSON then offered a resolution that the Convention should proceed to revise the constitution, beginning at the preamble and so going on in course. Every day's proceeding, he said, had satisfied him of the propriety and necessity of this mode, which had been originally proposed by the gentleman from Dracut (Mr. VARNUM.)

Mr. BLAKE of Boston said the gentleman was out of order, as this question had already been determined.

The PRESIDENT decided that the gentleman from Hingham was not in order.

Mr. RICHARDSON was going on to make further remarks.

The PRESIDENT told him the subject of his motion had been decided, and that he was out of order. He might appeal from the decision of the chair if he thought proper.

On motion of Mr. WEBSTER of Boston the Convention resolved itself into a committee of the whole upon the unfinished business of yesterday. Mr. DANA of Groton in the chair.

The CHAIRMAN stated to the committee that the question before them was upon the amendment offered by the gentleman from Boston (Mr. HUBBARD) relating to the declaration of belief in the Christian religion.

Mr. SLOCUM of Dartmouth said that if the refusing this amendment were going to abolish the Christian religion, he should by all means be in favor of adopting it ; but he had no apprehension of that being the case. If the amendment had proposed to require this declaration to be taken by the judges of the supreme court, he

should have liked it better. He wished to know whether other persons were not to have any religion besides the members of the Legislature. He thought requiring this declaration was useless. It was very pleasant to come to the General Court, and a man would make this declaration even if he did not believe in the Christian religion. He asked if taking this declaration would make such a man a Christian? On the contrary, he thought it would make him tenfold more the child of the demon than he was before. Religion was a thing between the creature and Creator; it was not to be regulated by the laws of men. When the constitution of Virginia was forming, the Baptists became very uneasy, and they went to General Washington about it; he told them that if the constitution was going to deprive any man of the free exercise of his faith, he should oppose it. Mr. S. hoped the amendment would not be adopted.

Mr. BALDWIN of Boston said that after the arguments of yesterday he could not deny the right of the people to require such a declaration of their rulers; the only question, therefore, remaining related to the expediency of the measure. Would it tend to make men more Christian? He thought not. He considered it to be useless, or worse than useless. If a man was already a believer, taking this declaration would not make him more so; and if a man did not believe in the Christian religion, it would give him no satisfaction to have him say that he believed it. He thought the solemn oath required of legislators was sufficient, without obliging them to take this declaration. The terms *Christian religion* required defining. Some men understood one thing by them, and some another. He was a Christian himself, and he thought every believer ought to profess his belief, but in his individual capacity, and not as a qualification for holding a seat in the General Court. He could see no reason why such a declaration should not be required of the members of the Convention just as much as of members of the Legislature. He should vote against the amendment.

Mr. NICHOLS of South Reading said his reasons for opposing the amendment were different from any which had yet been urged. If we were a perfectly independent people, we might have a right to require such a declaration, but the constitution of the United States is paramount to the state constitution, and that constitution guarantees to the several states a republican form of government. Our constitution, with this provision in it, would be an anti-republican form of government, and to make it consistent with the principles contained in the declaration of our independence, we should alter a clause in that declaration so as to read all *Christians* are born free and equal, instead of all *men* are born free and equal. The requisition had been placed by gentlemen upon the same ground as the requiring candidates for office to be possessed of property. He agreed with gentlemen in the justness of the comparison, and he hoped that requirement too would be abolished; so that the people might elect whom they pleased to fill any office. The gentleman

from Chelsea (Mr. TUCKERMAN) had said there would be Christians enough to fill offices. He was acquainted with many excellent men among the Universalists, and he had no doubt there might be enough of them found capable to fill all offices; but this was no reason for confining the selection to that class. He was not a deist, but from what he understood of their tenets, there might be very good men among them every way capable of sustaining any civil office, and the community ought not to lose their services because they had not a qualification which has nothing to do with the fitness for office. This requisition was anti-republican and repugnant to the liberties of the people. He said he would notice one argument which had been used on the other side, viz., that this exclusion would exclude nobody; if so, he would ask why not strike it out of the constitution?

Mr. BLISS of Springfield said that believing the right of the people to exact such a declaration as is contained in the amendment, and being satisfied in general with the arguments which had been urged in favor of retaining such a declaration in the constitution, he should trouble the committee with but a few remarks. He differed in opinion from gentlemen who had said this declaration was in the nature of an oath. It was not so; there was nothing in it like calling God to witness, or like a promise; it was a declaration merely, to be subscribed in the presence of several persons. He should not have risen, however, on account of his dissent on this point. He differed as to other points from several gentlemen who had expressed their sentiments. The more the constitution was examined, the more perfect appeared the symmetry of its parts. There was a fitness in requiring this declaration to be made by the persons mentioned in the constitution, because the constitution enjoins it upon those persons to provide for the support of the Christian religion. It is not made a part of the duty of the judges of the supreme court to provide for the support of christianity, and they are therefore not required to make this declaration. In relation to the question of expediency, he made a distinction between inserting such a provision in a new constitution, and striking it out of a constitution which had been in operation so long as our constitution. He would not say how he should act in the former case, but he thought to strike the declaration out of our constitution, would have a deplorable effect. He insisted upon the importance of sustaining religion and morality. Everything which looked like a disregard to religion, had an injurious effect, and he was persuaded that striking out this clause would have a bad effect on many minds, whether justly or not, he would not say. What was said of the religious scruples of different sects deserved very little consideration. This declaration had nothing to do with sects or particular doctrines. Nothing was said in it of the effect it was to have on particular minds; it did not include the practical influence which some gentlemen seemed to suppose; it required only a firm persuasion of the truth of the Christian religion. But even if there were a few men who put such an erroneous construction upon it, the good of the community should



not be sacrificed for their sakes. It had been said that this requisition would have but little influence on people; he thought otherwise. He thought that men exalted to the office of legislators would deem it of importance to tell what they really believed. An oath might have no effect on some minds; they could not help it, though it would be a deplorable thing. Ought oaths, therefore, to be abolished? It was just so with this declaration. He deplored the influence which the striking out this declaration would have on the minds of the people, and particularly of youth. It had been said that good men would be excluded by this requirement. If there should be a few persons in half a century in this condition, they ought not to be regarded in an instrument which has in view the general good. A remark had fell from the learned gentleman from Newburyport (Mr. WILDE) which he thought was not so sound as was to be expected from that quarter. He (Mr. W.) had said that, as the Commonwealth was generally Christian, little danger or inconvenience was to be apprehended from striking out this declaration, as few men, not Christians, would be elected; whereas, if the State had been nearly equally balanced between christianity and some other religion, it would be proper to have such a provision. He did not disagree with the gentleman on the last point; but the argument would be stronger for abolishing the requirement, because it would exclude more persons from the government. He hoped this declaration would remain in the constitution, and that the amendment would prevail.

Mr. DEAN of Boston said if he was persuaded that retaining this declaration in the constitution would do any good, or reflect honor on the Commonwealth, he would retain it; but he was far from being of that opinion. The design of making this declaration of belief in the Christian religion was not evangelical; it was not construed to include all that is contained in such a profession of religion; and he asked whether it was proper to have two ways of professing religion, one evangelical, the other a matter of state policy. It was important that men who rule over a Christian country should be Christians, but it should be effected by other means than by the constitution. Let no legal incapacity of this kind interfere between the people and their choice of rulers. It had been said to be the duty of the government, to bring all their influence to the support of christianity; he doubted it. Let there be the example of good legislators; this was better than all their entries in the journal. Their religion should be voluntary, not compelled. You may burn a man at the stake, but you cannot convert him in that manner. If legislators are not good men, it produces a bad effect to have their declaration staring them in the face. Let a man's conscience and his duty to God lead him to the altar of religion. If you wish men to be Christians, let there be good examples; let Christian ministers do their work; support religious institutions; and the less legislation the better. The religion of England was not owing to her test acts and corporation oaths, but to her bishoprics, her deaneries,

&c. Surely, Mr. Chairman, this is a much better mode for us to adopt, than to have recourse to religious tests. Leave religion to the care of God, and it will spread its influence over the globe.

Mr. FREEMAN of Sandwich said he rose as an humble individual to lift his voice against the rejection of the declaration. Alluding to the quarter from which much of the opposition to it had come, if he might use the sentiment of a profane author upon so sacred a subject, he could not but exclaim, "And thou too Brutus—this is the unkindest cut of all." He was surprised to hear so many ministers of the gospel whom he might have expected to be always ready to advocate the cause of religion and morality, giving their testimony in favor of expunging this article. He asked what practical injury had resulted from the article, and what practical benefit would result from exchanging it. Who and what are we? Are we not descendants of the Pilgrims, who suffered so many hardships for the purpose of securing the privilege of worshipping God and preserving the institutions of religion in their purity, now engaged in the work of establishing civil government under the auspices of the Christian religion? It was formerly required that a person should be a church member, to entitle him to participate in the government; and at this time the people have an undoubted right to make church-membership a qualification for office. In his opinion men of better lives and more useful members of society would now become rulers, if such were the qualification. It would have a good effect upon the individual and upon the community. He would have no objection to demand such a qualification in the chief magistrate. He was an advocate for religious liberty. He hoped never to see the spirit of the constitution as it respects religious freedom departed from. He would have no sect preferred, no restraint upon the consciences, opinions, or even caprices of men. Let them go where they please, but in a Christian country let it be required that candidates for office shall be Christians. He alluded to an argument which had been founded upon the omission to require the test from judges of the supreme judicial court. He said that as the judges are appointed by the executive, this restriction upon the discretion was necessary—care being taken to preserve the purity of the fountain, the streams would be pure. The inhabitants of the town he represented were a Christian people, and he should be ashamed to go home and meet them after having expunged this declaration from the constitution.

Mr. SAVAGE said, the proposed amendment is only the words of the constitution of 1780. (Here an interruption occurred by repeated and confused calls of the question, which was terminated by the Chairman, who said the highest honor of his life was to preside in these deliberations, conjuring the members of the committee to permit the progress of the debate.) The language of the constitution, requiring all officers, executive or legislative, to declare their belief in the Christian religion and firm persuasion of its truth, does not seem a heavy restriction. It is a declaration which the great majority, he hoped he might say every member of this Con-

vention, would make with readiness. He had taken it with pleasure several years since, and would not object on his own account. But he wished to have the restriction on others removed, and more especially claimed the right to give his reasons, because those which chiefly operated on his mind, had not in the debate been stated by gentlemen in full. Not, sir, that any supporters of the test should be charged by me with bigotry; nor because our fathers who formed the constitution, should be blamed as narrow and exclusive in their principles; but because the result of the restriction is injurious to christianity.

The majority of mankind receive their religious principles, as their other education, from their parents and teachers, and they perhaps retain them without inquiry. But men of cultivated minds, and many such there are—when they begin to employ the principles instilled into them in infancy, and to reason about them, often have painful and harassing doubts. These doubts require examination, and it cannot be perfectly had by men of even great advantages of education, so as to lead soon to certainty. Not always one year or two will do. Half of life passes sometimes before full conviction. Yet these doubts, sir, are a proof of honesty; and if such men are excluded from office till their doubts are removed, an improper bias in one case, or a prejudice in the other, is given. He could enumerate many most distinguished men, opposed to our religion, from a misfortune in their early education, who had done great honor to letters, and injury to christianity, for which their instructors were chiefly to be blamed. But he would spare the patience of the committee. He could not, however, omit one. The celebrated Gibbon, born and educated a protestant, converted or perverted to the Romish church, banished by his father to a foreign land to be converted again, and then converted, indeed, but to nothing, almost a universal skeptic. But for the injudicious treatment of his parent, he might have done as much honor to christianity, as his means allowed him to offer injury. Such a man was not afraid to enter upon office; and when required to express his assent to such a declaration as this proposed, he either does or does not. He does, and declares an untruth. But with his hypocrisy he passes equally as well as the majority of firm believers around him—and will not this prevent his fair and full inquiry, when it is unnecessary for his purpose? Or, sir, he does not declare his assent, and forever after acquires a prejudice against the religion that opposes his entry to office. Yet, sir, that man I would have voted for as a candidate for political power, much as I differ from his opinions on religion. I would not insist on his declaring his belief of christianity, because it might prevent his conversion to it. In our own country too, many distinguished men, at some time in their lives, have not enjoyed a settled faith in christianity. I have been informed on high authority—it is not to be sure within my own knowledge—that the illustrious President of the Convention of 1780, the venerable Bowdoin, afterwards governor of the Common-

wealth, was many years not a believer in our religion. Yet he held office with great approbation of his constituents, and was deserving of it, as an honest man. Afterwards, by following the current of evidence, on due conviction, he declared his assent. But while in the state of uncertainty, had the test been proposed to his mind, do not gentlemen see the evil consequences either of his assent or rejection? Such is often the case of the truest asserters of the faith. Many reach to middle age, who have never been called by their circumstances to examine the opinions heedlessly received, almost by infusion, in their early childhood, and then find them, or some of them, unfounded, and thinking the whole must go together, have rejected at once the substance and the accidents. Some they are told are fundamentals, which they are sure are false; and stripping off these, they suppose the whole false, because they have not learned to distinguish the parts. He wished every man to come into office without a prejudice against the Christian religion, if he had not studied it sufficiently to acquire satisfaction of its truth, and thus, he thought, our principles would be more sure to prevail, and for this reason he hoped the amendment would not be adopted.

Mr. WALKER of Templeton was one of the select committee who reported this resolution, and he rose to express some of his reasons for voting in favor of it. The majority of the people had the right to adopt such rules as they should think proper for promoting the public good, provided they did not interfere with the inalienable rights of individuals. The right of every one to be protected in the enjoyment of life, liberty, and property, were admitted to be fundamental principles. As it regards the right of demanding a religious qualification in a candidate for office, there is a difference of opinion. Admitting that we have the right to demand it—he doubted the expediency of it. He was opposed to it, because it did no good. If it was a real qualification he would retain it. The experience of forty years had not shown it to be of any use. If there are infidels, it will not operate to exclude them from office. A deist would consider it an imposition that he should be compelled to make the declaration, and would make it though he did not believe it. Men of loose lives will make the declaration—they have made it—there have been bad men who have come forward and made the declaration, considering it an imposition, and that they are not bound by it. The constituents ought to be judges of the character of those they elect—they know them and will determine their qualifications. He did not agree that the constitution should be approached with that awe and trembling which would deprive us of our senses. The constitution of the United States was the work of great and wise men, and they did not consider a religious test necessary. He was not afraid that our constituents would think that we were treating religion with contempt—they are an enlightened people and are capable of judging. He thought it his duty to give his voice in favor of the resolution.

Mr. STURGES of Boston said that no gentlemen had attempted to

show that the test had produced any harm. He thought it incumbent on them to show this, to authorize striking it out of the constitution where we now find it. In answer to the argument of the gentleman last speaking, founded upon the example of the United States constitution, he contended there was no analogy between the two cases. He remarked in answer to the argument of the gentleman from Boston, that it would operate to exclude from office men who have not made up their minds upon the evidences of christianity, that he would not do gentlemen so situated, so great an injury as to divert their minds from the important duty of satisfying themselves on this subject, by calling them to public offices where their services could very well be dispensed with.

Mr. HUSSEY of Nantucket said the object of the Convention was to make such alterations and amendments in the constitution as may be deemed necessary and expedient. Is it necessary to expunge that part of the constitution which requires a declaration of a belief in the Christian religion, is a question truly momentous and important. I would ask, sir, what benefit can possibly result to the citizens of this Commonwealth, from throwing open the doors and admitting a race of unbelievers to the rights of legislation. By introducing them to important offices and to a seat in our Legislature, we shall add to their weight and influence, and consequently promote the growth of infidelity. With these views I shall be in favor of retaining the religious test.

Mr. FLINT of Reading spoke in favor of the amendment to the resolution. After expressing his respect for the framers of the constitution, his reluctance to change any important principle which they had established, the interest which pious and good men feel in the preservation of this principle of the constitution, and the tears which they would shed if it were to be rejected, he proceeded to argue that no advantage would be gained by admitting to important offices men who have not a firm persuasion of the truths of christianity.

Mr. WILLIAMS of Beverly contended that there was more danger of insincere professions of belief if they were demanded as a qualification for office, than there was in professions on admission to the church. The temptation of office may lead to false professions. If he understands the language of the declaration required by the constitution, it demands that belief which is required for admission to the church of God. It contains all that language can embrace, and he had yet to learn the propriety of requiring as a qualification for office, such a religious profession. Gentlemen had expressed a reluctance to expunge this requisition from the constitution on account of its antiquity. He had not this respect for antiquity. Brahma and Confucius were more ancient than christianity itself. He thought it his duty to raise his voice against the amendment, and hoped it would not succeed.

Mr. J. PHILLIPS of Boston replied to some of the arguments against the amendment. He was opposed to any change in this

part of the constitution as a departure from the example of our ancestors, and as part of a system of innovation which would tend to weaken the supports of religion, and he should resist every such change as long as he had any power.

The question was then taken on the amendment, and decided in the negative, 176 to 242.

The question was then stated on the adoption of the resolution as reported by the select committee, and decided in the affirmative.

Mr. WARE of Boston then offered a resolution, which, after some conversation respecting the most suitable time for considering it, he withdrew. The purport of the resolution was, that the constitution should require in candidates for office, the reputation of being believers in the Christian religion.

The second resolution, which declares what offices holden under the constitution, shall be considered incompatible, was then taken into consideration.

Mr. WEBSTER said, that as the constitution was framed before that of the United States, there was necessarily a deficiency in that part of it which relates to incompatibility of offices. The present resolution first provides that no person holding any office under the authority of the United States, postmasters excepted, shall at the same time hold the office of governor, lieutenant-governor, or counsellor, or have a seat in the senate or house of representatives of this Commonwealth. It next provides that no judge of any court in this Commonwealth and several other officers, shall continue to hold their offices after accepting the trust of a member of Congress; and that judges of the courts of common pleas shall hold no other office except that of justice of the peace, and militia offices. He proceeded first to inquire whether it was proper to provide that no judges of any court should sit in the Legislature. The prohibition is now confined to justices of the supreme judicial court. The committee thought that there was no objection to extending it to judges of the courts of common pleas and other courts. They went on the presumption that when an office was established, it would be one which demanded as much attention as the incumbent could conveniently give to it. There was besides an impropriety in mixing the legislative and judicial departments. In all the courts there was business of importance. Since the establishment of the constitution, the courts of common pleas had much increased in importance and dignity, and they were likely still to increase, and it was therefore more expedient that the judges should confine their attention to the duties of their offices. There was also an objection to their holding a seat in the Legislature, from the manner in which they are elected. It seemed improper that the judges of the land should become candidates for popular favor at the annual elections. In proposing to exclude officers of the United States from the higher offices in the Commonwealth and from a seat in the Legislature, they had followed the example of almost all the state constitutions recently formed. The general principle would exclude

postmasters, but this office is, in a large proportion of cases, one of no emolument, but of some trust, and it appeared not advisable to exclude from the scope of the postmaster-general, in making these appointments, so many persons as would be excluded, if the acceptance of the office were to shut them out from all offices under the State government.

After several ineffectual attempts to amend the resolution, it was finally adopted without alteration.

The third resolution of the select committee, which provides the mode in which amendments shall be hereafter made to the constitution, were then taken up.

Mr. NICHOLS moved to strike out the words "two-thirds," with a view of inserting "a majority" or "three-fifths."

Mr. WEBSTER said, that if these words were struck out they could not be again inserted. But if the proposition should on a vote be disapproved, any other proportion could be substituted. The committee, in filling the blank, were governed both by their own sense of what would be the most proper number, and by the consideration, that this, being the highest number which would probably be proposed, would necessarily be first put. They thought the Convention would have a view to the permanency of the constitution, and would suppose that it would be necessary to change it only for practical purposes. It had been found, in the practice of forty years, that it had served to protect all the essential rights of the citizens; that the great outlines were so established as to need no alteration. It was thought, therefore, that a provision for a general revision was unnecessary.

Any plain, sensible, and useful alterations which might be suggested, the people would see, and in the mode proposed would easily be effected. It was not thought proper that the Legislature should have the power of submitting such alterations to the people by a small majority. But if the alteration was obviously useful and necessary, the public opinion would demand that the Legislature should sanction it by the required majority. When the question was once submitted to the people, a majority only was required to approve the amendment proposed.

Mr. PARKER, of Charlestown, Mr. CHILDS, of Pittsfield, and Mr. NICHOLS, spoke in favor of the amendment, and Mr. BLAKE and Mr. FOSTER against it.

The question was then taken on Mr. NICHOLS's amendment, and decided in the negative.

Mr. WEBSTER moved to amend by inserting the words, "with the yeas and nays on the passing thereof," after the direction that the proposed amendments shall be entered on the journals of the two houses. This amendment was agreed to.

The question was then taken on passing the resolution, and determined in the affirmative.

The second report of the same committee relating to the authority to incorporate towns with city privileges, was then taken up and the resolution read.

Some debate was had upon this resolution, and the blank was filled with "five thousand."

After further debate, on motion of Mr. BLISS, the committee rose, reported progress, and had leave to sit again.

At a quarter past two the House adjourned to nine o'clock, to-morrow.

### WEDNESDAY, DECEMBER 6.

The Convention met at 9 o'clock, and attended prayers offered by Rev. Mr. PALFREY.

Mr. PRESCOTT of Boston, from the standing committee under the third resolution, offered the following reports, which were read :

#### *Commonwealth of Massachusetts.*

IN CONVENTION, DECEMBER 6, 1820.

The committee, to whom it was referred to consider whether any, and if any, what alterations or amendments it is proper and expedient to make, in so much of the constitution as is contained in the second section of the first chapter of the second part, and respects the senate, and also so much thereof as is contained in the third section of the same chapter, and respects the house of representatives, ask leave to report the following resolutions:—

1. *Resolved*, That it is proper and expedient so far to alter and amend the constitution, as to provide, that there shall be annually elected, by the free-holders and other inhabitants of the Commonwealth, thirty-six persons to be senators for the year ensuing their election.

2. *Resolved*, That it is proper and expedient so far to alter and amend the constitution, as to provide that the number of districts into which the Commonwealth shall be divided for the purpose of electing senators, shall never be less than ten.

3. *Resolved*, That it is proper and expedient further to alter and amend the constitution, so as to provide, that no county shall be divided for the purpose of forming a district for the election of senators.

4. *Resolved*, That it is proper and expedient so to alter and amend the constitution, as to provide, that the several counties in the Commonwealth shall be districts for the choice of senators, until the General Court shall alter the same,—excepting that the counties of Hampshire, Hampden, and Franklin, shall form one district for that purpose, and also that the counties of Barnstable, Nantucket, and Dukes County, shall together form a district for that purpose, and that they shall be entitled to elect the following number of senators, viz: Suffolk, six; Essex, six; Middlesex, four; Worcester, five; Hampshire, Hampden, and Franklin, four; Berkshire, two; Plymouth, two; Bristol, two; Norfolk, three; Barnstable, Nantucket, and Dukes County, two.

5. *Resolved*, That it is proper and expedient further to alter and amend the constitution, so as to substitute "the first Wednesday in January," for "the last Wednesday in May," in every place where these words occur in the second section of the first chapter.

6. *Resolved*, That it is proper and expedient so to alter and amend the constitution, as to provide that the governor, with four of the council for the time being, shall, as soon as may be, examine the returned copies of the record of the names of the persons voted for, and of the number of votes against each name, instead of five of the council, as is now provided in the third article of the second section of the first chapter.

7. *Resolved*, That it is proper and expedient so to alter the constitution as to provide that not less than nineteen members of the senate shall constitute a quorum for doing business.

8. *Resolved*, That it is proper and expedient so to alter and amend the constitution, as to provide that every corporate town, containing twelve hundred inhabitants, and also all corporate towns now united for the purpose of electing a representative, and having together a like number of inhabitants, may elect one representative.

9. *Resolved*, That it is proper and expedient further to alter the constitution so as to provide, that twenty four hundred inhabitants shall be the mean increasing number which shall entitle a town to an additional representative.



10. *Resolved*, That it is proper and expedient further to alter and amend the constitution so as to provide that each corporate town in this Commonwealth, containing less than twelve hundred inhabitants,—and also all the corporate towns which are now united for the purpose of choosing a representative, and have together less than twelve hundred inhabitants, shall be entitled to elect one representative every other year.

11. *Resolved*, That it shall be the duty of the Legislature, at their first session after the census which is now taking under the authority of the United States, shall be completed, to divide the towns in each county containing less than twelve hundred inhabitants, including towns united as aforesaid, into two equal classes. That the first of these classes shall comprise half the towns in number, (those united as aforesaid to be considered as one town,) and those towns which contain the greatest number of inhabitants; and that each of the towns in this class shall be entitled to elect one representative the first year after they shall have been so classed. That the second class shall consist of the other corporate towns in the county having less than twelve hundred inhabitants, including those united as aforesaid, each of which shall be entitled to elect one representative the second year after they are so classed; and that the towns so classed may each thereafter continue to elect one representative every other year; and if the towns in any county shall happen to consist of an uneven number, the town making such an uneven number shall be placed in the second class, and be entitled to elect a representative every other year.

12. *Resolved*, That it is proper and expedient so to alter and amend the constitution, as to provide that whenever the population of any corporate town, or of the towns united as aforesaid, and classed as aforesaid, shall have increased to twelve hundred inhabitants, according to the census hereafter to be taken under the authority of the United States, or of this Commonwealth, such town or towns so united shall thereafter be entitled to elect a representative.

13. *Resolved*, That it is proper and expedient so to alter the constitution as to provide that every town which shall hereafter be incorporated within this Commonwealth shall be entitled to elect one representative, when it shall contain twenty-four hundred inhabitants, and not before.

14. *Resolved*, That it is proper and expedient so to alter the constitution as to provide that the members of the house of representatives may be paid for attending the General Court during the session thereof, out of the treasury of the Commonwealth.

15. *Resolved*, That is proper and expedient to alter and amend the constitution so as to provide, that not less than one hundred members shall constitute a quorum for doing business.

16. *Resolved*, That it is proper and expedient so to amend the constitution as to provide that no member of the house of representatives shall be arrested on mesne process, warrant of distress, or execution, during his going unto, going from, or his attending the General Court.

17. *Resolved*, That it is expedient so far to alter and amend the constitution as to provide that the senators shall have the like privilege from arrest as the members of the house of representatives.

All which is respectfully submitted.

By order of the committee,

WILLIAM PRESCOTT, *Chairman*.

This report, on motion of Mr. Prescott, was committed to a committee of the whole, assigned to Friday at 9 o'clock, and ordered to be printed.

## SECOND REPORT.

The committee on so much of the constitution as is contained in the second section of the first chapter of the second part, and respects the senate, and also so much thereof as is contained in the third section of the same chapter, and respects the house of representatives, and who were instructed to take into consideration the propriety and expediency of inserting, at the end of the second article of the second section of the first chapter, respecting the senate, an amendment, that on the first Monday of April, or on \_\_\_\_\_ day of \_\_\_\_\_ the election of governor, lieutenant governor, and senators, and the elections of electors of president and vice president of the United States and representatives to Congress, if such elections are

to be had during the year, of representatives to the General Court, and of all town and county officers, shall be had on said day, ask leave to report the following resolutions :—

1. *Resolved*, That it is proper and expedient so to alter and amend the constitution as to provide that the meetings of the inhabitants of each of the towns in the several counties in this Commonwealth, for the purpose of electing governor, lieutenant governor, senators and representatives in the Legislature of this Commonwealth, shall be holden on the same day in each year.

2. *Resolved*, That it is expedient so to alter and amend the constitution as to provide, that the meetings of the inhabitants of each of the towns in the several counties in this Commonwealth, for the purpose of electing governor, lieutenant governor, senators and representatives in the Legislature of this Commonwealth, shall be holden on the                      day of                      annually.

3. *Resolved*, That it is not expedient so to alter the constitution as to provide, that the meetings of the inhabitants of all the towns in the several counties in this Commonwealth shall be holden on the same day for the choice of electors of president and vice president of the United States and representatives in Congress, as for governor, lieutenant governor, senators and representatives in the Legislature of this Commonwealth.

4. *Resolved*, That it is not expedient so to alter or amend the constitution as to provide, that town officers or county officers, shall be chosen on the same day as governor, lieutenant governor, senators and representatives in the Legislature of this Commonwealth.                      For the committee,                      WILLIAM PRESCOTT.

The report being read, was committed to the committee of the whole, assigned to Friday at 9 o'clock, and ordered to be printed.

Mr. JACKSON of Boston, from the committee to whom the subject was committed, reported the following resolutions :

IN CONVENTION, DECEMBER 5, 1820.

1. *Resolved*, That all such amendments in the present constitution of the Commonwealth, as may be made and proposed by this Convention, shall be submitted to the people for their ratification and adoption, in town meetings or district meetings, to be legally warned and held on the                      day of                      next; and at which meetings all the inhabitants qualified to vote for senators and representatives in the General Court may give in their votes by ballot, for or against the general amendments that shall be so proposed. And the selectmen of the respective towns and districts shall in open meeting receive, sort, count, and declare the votes of the inhabitants, for and against each of the said amendments; and the clerks of the said towns and districts shall record the said votes; and true returns thereof shall be made out under the hands of the selectmen, or the major part of them, and of the clerk; and the selectmen shall enclose, seal, and deliver the same to the sheriff of the county, within fifteen days after the said meetings, to be by him transmitted to the office of the secretary of the Commonwealth on or before the                      day of                      next, or the said selectmen may themselves transmit the same to the said office on or before the day last mentioned.

2. *Resolved*, That a committee of this Convention be appointed to meet at the State House in Boston, on the said                      day of                      who shall open and examine the votes then returned as aforesaid, and shall as soon as may be certify to his excellency the governor, and also to the General Court, the number of votes so returned for and against each of the said amendments, and each one of the said amendments that shall be approved by a majority of the persons voting thereon, according to the votes so returned and certified, shall be deemed and taken to be ratified and adopted by the people.

3. *Resolved*, That a copy of all the amendments made and proposed by this Convention, shall be attested by the president, and by the secretary thereof, and transmitted to his excellency the governor, and another copy shall be attested as aforesaid, and engrossed on parchment, and shall, together with the journal of the proceedings of this Convention, be deposited in the office of the secretary of the Commonwealth. And a printed copy of the said amendments, attested by the secretary of this Convention, shall be transmitted as soon as may be, to the selectmen of every town and district of the Commonwealth.

4. *Resolved*, That all the amendments made by this Convention shall be proposed in distinct articles; each article to consist as far as may be of one independent prop-

osition; and the whole to be so arranged that upon the adoption or rejection of any one or more of them, the other parts of the constitution may remain complete, and consistent with each other. If any two or more propositions shall appear to be so connected together, that the adoption of one and the rejection of another of them would produce a repugnance between different parts of the constitution, or would introduce an alteration therein, not intended to be proposed by this Convention, such two or more propositions shall be combined in one article; and each of the said articles shall be considered as a distinct amendment, to be adopted in the whole or rejected in the whole, as the people shall think proper.

5. *Resolved*, That the several articles when prepared and arranged as aforesaid shall be numbered progressively; and the people may give their votes upon each article as designated by its appropriate number, without specifying in their votes the contents of the article, and by annexing to each number the words yes or no, or any other words that may signify their adoption or rejection of the proposed amendment; or they may give their votes upon all the articles, or upon any number of them together, without being required to vote separately and specifically upon each of the said articles.

The resolutions being read, were, on motion of Mr. JACKSON, ordered to lie on the table and to be printed for the use of members.

On motion of Mr. WEBSTER, the Convention went into committee of the whole on the unfinished business of yesterday, Mr. DANA in the chair.

The resolution relative to the granting of power to the Legislature to incorporate towns with the powers of city government, was taken into consideration.

Mr. SHAW of Boston thought that if gentlemen would take time to examine the object of this amendment they would give it a ready assent. He disclaimed all idea of claiming powers or privileges for one class of citizens, which were not to be equally extended to another. But an act of incorporation for municipal purposes is equally enjoyed by all the towns in the Commonwealth. In other countries, cities were incorporated with substantial powers and privileges,—the right of choosing municipal officers; the right of superintending subjects of local administration, and, in England, the right of choosing members of parliament. But in this Commonwealth, every town is to all substantial purposes a city. They are towns corporate, having the power of choosing their own officers, and sending members to the General Court, with jurisdiction over all their local and prudential concerns,—such as the support of schools and highways, the relief of the poor, the superintendence of licensed houses, and other matters of local police. They have the power of making by-laws, and assessing and collecting taxes. They possess all the powers and privileges of municipal corporations in Great Britain or in this country. If it were otherwise, and if it were desirable to invest them with further powers, it is within the authority of the Legislature to grant it. It is obvious that a large and populous town must require many regulations, burdensome and expensive indeed, but yet necessary to its security and comfort, which are not necessary and would not be useful in a small town. Such are the regulations of streets, drains, lamps, the watch, markets, health laws, and many other objects of local policy. Courts must be erected, particularly adapted to the wants of such a town. But these objects are within the powers of the Legislature, and they

are always ready amply to provide for them. What, then, is the necessity of granting any further power by an amendment of the constitution? Mr. S. said he would confine himself to answering this question. The constitution, as it stands, requires a form of town government, not adapted to the condition of a populous town. The inhabitants of towns meet together for the purpose of giving their votes for town, county, state, and United States officers. In these cases the meeting is not deliberative. But they have another class of duties, which consists in deliberating and acting upon all questions falling within their jurisdiction, in which cases they are to be considered in all respects as deliberative bodies. But the constitution provides that the inhabitants shall meet and the votes be given in open town meeting; that the votes shall be counted, sorted and declared in open town meeting, in which the selectmen shall preside. These provisions render it imperative that the voters should meet together in one body, be they few or many. Mr. S. computed that the voters qualified to vote in town affairs were about one fourth or one fifth of the population. In a town of forty thousand inhabitants this would give from eight to ten thousand voters. Could this number of persons beneficially meet together in one body for the purpose of election or deliberation? He thought obviously not. This then is the essential difficulty. The General Court can grant powers as occasion may require, but cannot dispense with the mode of organization required by the constitution. What then is the remedy? It is to authorize such an organization as is adapted to the condition of a numerous people,—such an organization as will admit the inhabitants to meet in sections for the purposes of election, and choose representatives who should meet for the purpose of deliberation, instead of the whole body. Mr. S. proceeded to explain his views more at large, and to answer objections. As to filling the blank it should only be considered what number of persons could conveniently meet and act together without danger of disorder. Probably about two thousand voters might be the highest number, and he should be in favor of fixing at ten thousand, the number of inhabitants over which the General Court should have authority to establish a city government.

Mr. BLAKE of Boston said that he thought that the objection which had been expressed to the resolution arose from the small number with which the blank had been filled, and that there would be little opposition to the principle. It was self-evident that the form of town government, so well adapted to the purposes of small towns, was inapplicable to a large town where there are many inhabitants within a small compass. Boston now contains 40,000 inhabitants, and they may be in 20 years 60,000. How was it possible that such a population should hold a town-meeting? He thought if the question was put upon a proper footing for trying the principle, there would hardly be a dissentient voice.

Mr. FOSTER of Littleton said that he was not well informed on this subject, and he presumed that many other gentlemen were in

the same situation. He inquired whether a city incorporated with the powers proposed in the resolution would not exercise the power of making laws which would affect persons who were not inhabitants of the town, and whether inhabitants of other towns going into a city would not be liable to be ensnared and entrapped by the operation of laws unknown to other parts of the Commonwealth.

Mr. SALTONSTALL said he would inform the Rev. gentleman last speaking, that he might go into Boston with equal safety after it was a city government as now, that they would have no more power to make by-laws that might operate inconveniently on strangers than they now have. They have authority by statute to make regulations for the general convenience, and so may all our towns under the authority of the court of sessions, and there are now a great variety of such regulations. The police regulations would probably remain the same as they now are. The amendment proposed was not to give the large towns any peculiar powers or privileges, but only to secure their enjoyment of this in common with other towns, as had been fully explained by the gentleman from Boston, (Mr. SHAW.) Mr. S. thought the blank ought not to be filled with a less number than 10,000—a smaller number would excite greater jealousies and be more invidious. If reduced to 5000 there would be many applications from towns which might think there was some advantage in being made cities. He did not know that towns would desire to change their government which was peculiar to New England—he hoped they would not. It is a beautiful system, and had been most salutary. The Commonwealth from the beginning had been divided into these little republics, under a kind of patriarchal government, most wisely adapted to their situation, and calculated to preserve the good order of society. At the same time, the Legislature ought to have the right to extend this privilege to the second town in the Commonwealth.\* There had been a time when the excitement was such there, as to bring 1800 citizens together, equally divided; a day had been passed in choosing a moderator; the town had been kept together till late in the evening, and in one instance there was a degree of confusion, to which it is unpleasant to allude, and which had well nigh deprived the town of their right at the election of governor. It may be found convenient to vote in wards. Mr. S. did not wish the government of the town should now be changed, but it ought not to be precluded by the constitution from the privilege, as it may become important hereafter to that and other towns, for the same reasons that now make it necessary in the capital.

Mr. WELLS of Boston said if the subject were understood, it would be perceived that very little additional power was intended to be conferred on the Legislature by this amendment to the constitution. He referred the gentleman from Littleton to the sixth article of the declaration of rights, in order to remove his apprehensions with respect to exclusive privileges. From that he would perceive that it would be impossible to grant exclusive privileges to the town of Boston by virtue of this amendment. The only reason for the reso-

\* [Salem.]

lution was on account of elections in large towns. He mentioned that in this town, at the town meeting for the election of delegates, the selectmen were employed from one o'clock in the afternoon to ten o'clock at night, in assorting and counting the votes; and if there had been as full a vote as there is on some occasions, it would have required three days.

Mr. ADAMS of Quincy said he might be mistaken, but he had thought there was no difference of opinion with respect to the general principle of the resolution, but only as to filling the blank. The inconvenience attending the elections in the large seaport towns was so great, he did not suppose any one could have questioned the expediency of giving the Legislature the power proposed by this resolution. Our towns were very happy as at present constituted—he had always loved the system of their organization, and thought that they would not be disposed generally to change their form of government. When the legislature of Connecticut gave facilities for all the towns becoming cities, it was inundated with applications for that purpose. The legislature began to be alarmed and to hesitate about granting charters of incorporation. At last a little clump of Indians in that state took it into their heads that they must apply for city powers and privileges. This convinced the legislature of the impolicy of granting charters with so much liberality, and there they stopped. If unlimited power were given to the Legislature to incorporate cities, there might be a great many applications, just as there were in Connecticut. He thought in filling the blank, the number of ten thousand was small enough.

Mr. MARTIN of Marblehead followed Mr. ADAMS. He was opposed to giving the Legislature power to incorporate cities.

The CHAIRMAN told him to confine his observations to filling the blank.

Mr. RICHARDSON of Hingham said he should confine himself to that, and should be very concise. He referred gentlemen to the sixth article of the bill of rights, and asked what right they had to say that a town of ten thousand inhabitants shall have city privileges, and one of nine thousand shall not.

Mr. PICKMAN of Salem, in answer to the gentleman from Marblehead (whose remarks we were not happy enough to hear) said that towns were already corporations, and that to make cities would be only changing corporations, not forming new ones. He was attached to the name and system of towns, and he should consent with reluctance to changing the town which he had the honor to represent, to a city. He thought the number ten thousand sufficiently small for filling the blank.

Mr. MARTIN said the Legislature had already remedied the evil complained of by the gentleman from Salem (Mr. SALTONSTALL) by providing that the moderator at town meetings should be chosen by ballot. Mr. M. was going on upon the resolution generally.

Mr. WEBSTER called the gentleman to order. The question was for filling the blank.

The CHAIRMAN told him (Mr. M.) that he was out of order. He had already spoken once and another gentleman had arisen to speak.

Mr. ABBOT of Westford was opposed to filling the blank with ten thousand; and to obviate the objection of the gentleman from Hingham, he would propose that the Legislature should have power to grant city powers and immunities to any town.

The question was taken for filling the blank with ten thousand and carried in the affirmative—223 to 140.

The question was now upon the resolution with the blank filled.

Mr. PRINCE of Boston said the gentleman from Littleton's apprehensions of being hampered by two opposite systems of laws, those of the Legislature and those of the city of Boston, were groundless, as the Legislature would be composed for the greater part of gentlemen from the country, and could control the city ordinances.

Mr. NICHOLS of South Reading moved to amend the resolution by inserting a provision that the by-laws or municipal regulations of city corporations, should be subject to revision and repeal by the Legislature. His object was to prevent powers being granted to corporations which should not be subject to recall. He made the proposition in consequence of the present doctrine respecting corporations.

Mr. WELLS thought the amendment superfluous, as the Legislature had the power already.

Mr. BLAKE said the amendment struck him agreeably. The question of by-laws being repugnant to the laws of the State, was at present to be decided by the judiciary. He thought it proper that the Legislature should have the power of judging in such cases and of repealing when they thought fit.

Mr. QUINCY of Boston, (who had risen at the same time with Mr. BLAKE,) said that gentleman had anticipated his remarks, and when the meal was well ground, he did not care to have it pass through his hopper.

The amendment proposed by Mr. NICHOLS was adopted. The question was then taken upon the resolution as amended and decided in the affirmative—291 to 24.

The remaining resolution reported by the select committee was then taken up, that it is not expedient to make any further provision, by the constitution, relative to the substitution of affirmations for oaths.

Mr. WEBSTER would only state the reasons on which the committee acted. The question had nothing to do with the mode of receiving testimony in the courts of law. All that part of the case rests with the Legislature and the courts—if anything be wrong, in that particular, it can be altered without any amendment of the constitution. No purpose requires a change of the constitution, except that of giving to persons, scrupulous of taking oaths, an option, in respect to offices, to make affirmation. Two things were to be considered—first the general principle—second, the acknowledged exception. The general principle in this government, and all others, was, that

high offices should be performed under the responsibility of a religious obligation, or oath. The exception in this Commonwealth was, that Quakers might take office, making an affirmation instead of an oath. That which is now objected to the resolution recommended by the committee, was, that it did not provide such an alteration of the constitution, as that affirmations might be substituted for oaths, in all cases, at the option of the party, on his suggestion that he had conscientious scruples. The committee had thought it not proper to recommend this alteration. It appeared to them that the question did not stand on the same ground as in the case of Quakers. The Quakers were a well known sect; and it was equally well known that it was a sentiment of that sect that all swearing was unlawful. This was a sentiment, which, whether right or wrong, they had long adhered to, and had given full evidence of their sincerity in regard to it. They have suffered for it, and maintained it for near two centuries, in the midst of severe trials, sometimes of great persecution. It had therefore been supposed that it was safe and proper to take their affirmation instead of an oath. If a man was a Quaker, that fact alone furnished evidence, in the common understanding of society, that he was really and truly scrupulous about taking oaths—because his religious sect was known to be scrupulous in that respect. But the case stood much otherwise with an individual not belonging to that sect, and therefore giving no evidence of his scruples but his own declaration. This declaration might be true, indeed; and it might be false;—and how was it to be decided? In short, it seemed contradictory and absurd to prescribe oaths of office, and then leave it to the uncontrolled option of the party to take the oath or not. It was possible that the existing provision might bear hard on here and there an individual. He regretted it—but either oaths should not be required at all, or they should not be dispensed with, at the mere pleasure of the party. This would be playing fast and loose on a very serious subject. It appeared to the committee, on the whole, that the exception in favor of Quakers stood on distinct and particular grounds; and that there was no ground on which to support an alteration of the constitution for the purpose of making other exceptions. As to testimony in the courts, that can be regulated elsewhere. The present question merely respects qualification for office; and the committee were of opinion that no new provision was necessary.

Mr. BALDWIN of Boston deemed it his indispensable duty to show his dissent from the opinion expressed by the gentleman who last spoke. He could not see why one denomination of Christians should be favored more than another. Were the Friends the only people to be trusted? He admired the virtue and simplicity of their character, but other persons were equally sincere in their scruples on this subject. If elected to office, a man might decline taking an oath, by declining the office, but it is not so in courts of justice. An affirmation was an appeal to God, without coming under the name of swearing. He had religious scruples himself about taking oaths, and had not taken one these forty years.



Mr. FOSTER thought it would be nugatory to have any oaths if every body was allowed to substitute affirmations when they pleased. He said he did not consider an affirmation as an appeal to God, but a promise by which a person subjected himself to human penalties in case he falsified the truth.

Mr. NEWHALL of Lynnfield moved as an amendment that affirmations should be substituted for oaths in all cases when the party shall have religious scruples about taking oaths.

Mr. NICHOLS was in favor of this amendment. He said it was not generally known that some other denominations besides Quakers had religious scruples about taking oaths. He considered the requisition repugnant to the declaration of rights.

Mr. WEBSTER wished to bring gentlemen back to the question. It was necessary to see what were the existing provisions on this subject. He said the regulation of oaths, except those of office, which had been already decided upon by the committee, were the subject of legislation, and the Legislature had full power in relation to them. Mr. W. made other remarks showing the inexpediency of adopting the amendment.

Mr. ENOCH MUDGE of Lynn said he had no such scruples himself, but many in Lynn had. He said the Quakers themselves disliked to see that name in the constitution. They wished to have the principle of substituting affirmations extended to all persons.

The question was taken on Mr. NEWHALL's amendment, and determined in the negative—86 to 278.

Mr. DANA, the chairman of the committee of the whole, being one of the electors of president and vice president, and the hour appointed for their meeting having arrived, stated the necessity of his withdrawing from the chair, and Mr. VARNUM was requested by the president to take the chair in his place.

The question on the resolution reported by the select committee being stated,

Mr. WILLIAMS of Beverly moved to amend it, by substituting a resolution that the constitution be so altered, as that all persons conscientiously scrupulous of taking an oath, shall in cases when an oath is required, be allowed to affirm upon the pains and penalties of perjury, provided that the persons administering the oath or affirmation shall be authorized to question them respecting the sincerity of their scruples.

Mr. WEBSTER observed that this proposition would take away all right from Quakers and put it in the power of the magistrate or other person administering the oath or affirmation to compel any one to swear or not according to his discretion or whim: That it put oaths of office on the same ground as other oaths, and it enabled the person appointed to administer such oaths to deprive a man of scrupulous conscience of the office to which he might be elected. That as to oaths before courts of justice, it was nugatory.

The question was taken upon Mr. WILLIAMS's amendment and lost, and after a few observations by Mr. NICHOLS in opposition to

the resolution the question was taken upon the resolution and decided in the affirmative—298 to 29.

On motion of Mr. WEBSTER, the committee rose and reported their agreement to the two resolutions.

*Bill of Rights.*—Mr. BLISS, from the committee on the first part of the constitution, offered the following report :

*Commonwealth of Massachusetts.*

IN CONVENTION, DECEMBER 6, 1820.

The committee to whom was referred so much of the constitution of this Commonwealth as is contained in the preamble and declaration of rights, to take into consideration the propriety and expediency of making any, and if any, what alterations or amendments therein, and report thereon, respectfully report :

That the title and preamble of the constitution, as it stands in the original, is proper and suitable, and ought to remain unaltered ; and that the declaration of rights contains a suitable and apt enumeration of the rights of the people and of the great principles of civil liberty.

The committee do not think it expedient that any essential alterations should be made in any of the articles, except the third ; but as it is possible that some expressions in them may hereafter be construed as interfering with the constitution and laws of the United States, they have thought it proper to recommend such an alteration in the phraseology as may remove all doubt.

They also think that the word "subject," where it occurs in said declaration, ought to be changed for a word more consistent with the feelings of freemen.

As to the third article in said declaration, while the committee are generally agreed, that the great privilege of religious freedom, and the support of public worship, and public religious institutions are so essential to the well being of society that they hold a distinguished place in that declaration, they have found no small difficulty in settling the mode in which the individual might be secured in the enjoyment of the right of selecting the place where he would attend public worship, and of appropriating to the teacher where he attends whatever he is obliged to pay, and at the same time securing to the community the contribution of all the citizens to an object so important as that of public worship. They have endeavored so to modify that article as to attain those ends, and respectfully submit the following resolutions.

By order of the committee,

GEORGE BLISS, *Chairman.*

*Resolved,* That it is expedient that the second and eleventh articles of said declaration be amended by substituting the word "citizen" instead of the word "subject."

*Resolved,* That it is expedient that the 12th, 13th and 14th articles be amended by substituting the word "person" for the word "subject" in said articles.

*Resolved,* That it is expedient that the third article in said declaration should be amended by substituting for the word "or" immediately after the words "bodies politic," the words "and," and by adding the words "incorporated and unincorporated."

*Resolved,* That it is expedient that the same article be further amended by substituting the word "Christian" for the word "protestant."

*Resolved,* That all that part of said article which invests the Legislature with power to enjoin an attendance on public worship, ought to be annulled, and be holden no longer obligatory.

*Resolved,* That with the above amendments and alterations so much of the said article as declares the importance of public worship and public instruction, and enjoins upon the Legislature the maintenance thereof, and also secures to societies the right of electing their own teachers, and which is hereto subjoined, ought to be retained as a part of said article :

"As the happiness of a people and the good order and preservation of civil government essentially depend upon piety, religion and morality ; and as these cannot be generally diffused through a community, but by the institution of the public worship of God, and of public instructions in piety, religion, and morality : Therefore, to promote their happiness, and to secure the good order and preservation of their government, the people of this Commonwealth have a right to invest their Legislature with power to authorize and require, and the Legislature shall from time to

time authorize and require, the several towns, parishes, precincts, and other bodies politic, and religious societies, incorporated or unincorporated, to make suitable provision, at their own expense, for the institution of the public worship of God, and for the support and maintenance of public Christian teachers of piety, religion and morality, in all cases where such provision shall not be made voluntarily.

"Provided, notwithstanding, that the several towns, parishes, precincts, and other bodies politic and religious societies, incorporated or unincorporated, shall at all times have the exclusive right of electing their public teachers and of contracting with them for their maintenance."

*Resolved*, That it is expedient that all that part of said third article which relates to the right of the citizen to elect the teacher to whose use he will appropriate the money he shall be holden to pay, and which immediately succeeds the foregoing, beginning with the words "and all moneys" and ending with the word "raised," should be annulled, and the following substituted in its place, to wit:—"And all moneys paid by the citizen to the support of public worship and of the public teachers aforesaid, shall, if he require it, be applied to the support of public worship where he shall attend, or the public teacher or teachers on whose instruction he attends, whether of a society incorporated or unincorporated; provided there be any on whose instructions he attends, otherwise it shall be paid towards the support of public worship and of the teacher or teachers of the parish or precinct in which the said moneys are raised. *Provided, however*, That any inhabitant of any parish or member of any religious society whether incorporated or not, may at all times unite himself to any society within this Commonwealth, incorporated for the support of public worship, and having first obtained the consent of such society with which he shall so unite himself—and having procured a certificate signed by the clerk of such society to which he hath so united himself, that he hath become a member thereof, and filed the same in the office of the clerk of such parish or society to which he hath belonged and in which said moneys are raised, he shall not, while he shall remain a member thereof, be liable to be taxed for any moneys raised after the filing of such certificate, for the support of public worship, or of any such public teacher, except in the society of which he hath so become a member; but shall be holden to be taxed in the society with which he so united himself until he shall cease to be a member thereof. *Provided*, also, that whenever any number of persons not less than twenty, shall have associated themselves together for the purpose of maintaining public worship, and public religious instruction, and shall have made and signed an agreement in writing under their hands, declaring such purpose, and shall have caused a copy of such agreement to be filed in the office of the clerk of the town or towns to which they shall respectively belong,—they shall in regard to the support of public worship, and the maintenance of public teachers, have all the powers, and be subject to all the duties, of parishes within this Commonwealth—and all persons so associated while they continue members of such society, shall not be liable to be taxed elsewhere for the support of public worship, or of any public teacher of piety, religion and morality. And any person may become a member of such society, so united, and certified as aforesaid, if such society shall consent thereto, and shall not, after he shall have procured and filed in the office of the clerk of the town to which he shall have belonged, a certificate signed by a committee or the clerk of such society of which he shall so have become a member, that he has become a member of such society, and attends public worship with them, shall not be liable to be taxed elsewhere, for any money raised after he shall have filed such certificate, so long as he continues a member thereof, and shall attend public worship with such society, and shall while he is a member thereof be holden to contribute to the support of public worship and of the public teacher or teachers in said society.

*Resolved*, That it is expedient that all the residue of the said third article and which is in the following words, "and every denomination of Christians demeaning themselves peaceably and as good citizens shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law," substituting the word "citizens" instead of the words "subjects of the Commonwealth," ought to remain as a part of said third article.

*Resolved*, That it is expedient that the twelfth article in said declaration should be amended by varying the expressions from the words "face to face" to the end of the sentence, as follows, to wit: "and in criminal prosecutions to be fully heard by himself and his counsel."

*Resolved*, That it is expedient that the seventeenth article of said declaration should be amended by adding after the word "Legislature" therein, the words, "and in conformity to the constitution of the United States."

*Resolved*, That it is expedient that the twenty-third article should be amended by annulling or expunging therefrom the word "Legislature" at the end of said article.

*Resolved*, That it is expedient that the twenty-seventh article thereof, should be amended by substituting the word "law" for the words "the Legislature."

*Resolved*, That it is expedient that the twenty-eighth article of said declaration should be amended by substituting the words "Legislative authority" for the words "authority of the Legislature."

On motion of Mr. BLISS, the report was committed to a committee of the whole, assigned to Thursday at 11 o'clock, and ordered to be printed.

*Lieutenant Governor and Council.*—On motion of Mr. BLAKE, the Convention went into committee of the whole on the unfinished business of Saturday, it being the report of the select committee on that part of the constitution which relates to the lieutenant governor and council.

The question was stated on the resolution offered by Mr. MORRIS, on Saturday, to strike out the third resolution reported by the select committee, and to insert a provision that the constitution be so altered that the council be chosen by the people.

Mr. MORRIS withdrew this resolution, which, he said, did not embrace his original ideas on the subject, and offered a substitute.

Mr. DEARBORN of Roxbury rose to offer three resolutions, which, if accepted, would serve as a substitute for that under consideration and that reported by the select committee. The purport of these resolutions was, to strike out that part of the constitution which directs that nine counsellors shall be appointed—so to amend that part relating to the lieutenant governor as to provide that he shall be president of the senate, that he may enter into debate when the senate are in committee of the whole, have a casting vote when the senate are equally divided, and when the two houses are assembled in joint body. And that if the offices of governor and lieutenant governor should become vacant, the president of the senate *pro-tempore*, or, if there should be no such officer, the speaker of the house of representatives, shall act as governor. He read also two other resolutions, which he should offer at another time, if these should be accepted; providing that appointments instead of being made by the governor and council, should be made by the governor and senate; and that all duties now required of the governor and council, should be performed by the governor and senate.

It being objected that it would not be in order to receive these resolutions, Mr. MORRIS withdrew his motion, and those offered by Mr. DEARBORN were read.

Mr. BLISS objected that it was not in order to receive these propositions. The committee had already determined all these questions relating to lieutenant governor, and all relating to the council had been once determined; but the third resolution and that only.

had been reconsidered. It was proper to discuss that only, and it was clearly contrary to the rules and orders, that propositions embracing all these subjects should be received.

The CHAIRMAN said it would be impracticable to introduce these propositions in this manner—to propose resolutions which shall do away what has been acted upon by the committee of the whole. The gentleman would have an opportunity to bring forward his proposition in Convention, and it might then, if necessary, be referred to a committee of the whole.

Mr. MORTON renewed his last motion. It was to substitute for the third resolution of the select committee, one which should direct that counsellors shall be annually chosen by the people by ballots, distinct from those given for senators, in such convenient districts as shall be herein provided for.

Mr. PARKER of Boston wished that gentlemen who submit propositions to the committee, might have an opportunity of explaining their reasons in support of their motions. In relation to this resolution, the committee ought to be informed how it was to be carried into effect. It proposed that counsellors should be elected by the people. All this was very good, but the question is as to the form in which this shall be done. They were as much chosen by the people when it was done by their deputies in convention of the two houses of the Legislature, as if it was done in town meeting. But it must be done in districts. How were those to be formed? He could see no mode which did not present insuperable difficulties. The population of the Commonwealth was about five hundred thousand. The districts must be formed with some degree of equality, and seven districts must be formed, each containing a population of about seventy thousand souls. Boston contains forty thousand. What part of the State will you take to make up the rest of the district? Will you take the county of Norfolk, or a part of Middlesex, that the voice of the people there may be merged in giving a counsellor to the town of Boston? Worcester would be about large enough for a district—the old county of Hampshire for another; but Berkshire is too small. Shall the established lines of Worcester and Hampshire be broken up? or will you go down to Cape Cod and tack the county of Barnstable to Berkshire? He proceeded to argue that it was not an interference with popular rights—referred to the recent example of Maine, and the practice here for forty years—urged the probability that so counsellors well qualified to perform the various duties would be elected—and recurred again to the incalculable difficulties that must be encountered in forming the districts.

Mr. MORTON supported his motion. He said that it was expected that the old principle of electing counsellors and senators together would be abolished, for the principle had been departed from in practice. On that principle the counsellors were elected by the people. The committee who have reported an amendment to that part of the constitution which relates to the choice of senators, have said nothing about counsellors. The people are therefore to be de-

prived of their voice in the election. The choice by convention of the two houses, he considered a farce. The practice had been to elect nine counsellors who had already pledged themselves in support of particular measures. The people who adopted the constitution had no idea that the principle of electing counsellors would be so misused.

Mr. LELAND of Roxbury thought that the mode proposed would have a salutary effect so far as it tended to bring into the council men of different political opinions, but he thought that there would be insuperable difficulties in carrying it into effect. Counties between whom jealousies existed, must be united; a caucus nomination would be necessary. He was in favor of an election by the people, but this proposition he thought visionary and the worst of all the modes proposed.

Mr. BLAKE did not entirely approve of this proposition, but he thought it the best that had been made. He thought it unnecessary to take the power of election from the people. It was an innovation which he would never consent to. He would not alter one feature or lineament of the constitution that should subtract from the powers of the people. There were solid objections to the choice by the Legislature. The office of counsellor had important duties; it was next in rank to that of lieutenant governor. All appointments to office were made only by approbation of the council. They had besides great and various duties, and it was a mistaken idea that men who had become incapable of active services, and whose faculties were decayed, should be stowed away in the council, never more to be heard of. If the power of election were taken from the people, there were insuperable objections to giving it to the Legislature. They were the last body that ought to possess it. They were unfit to have much to do with elections. It is their proper duty to make laws and not to elect officers, except in cases where it is indispensable. The gentleman from Roxbury had objected to caucuses. A legislative caucus was the worst of all. Members of the Legislature were subject to undue influences. A reverend gentleman had said, lead us not into temptation; if you give this power to the Legislature, you not only lead them into temptation, but deliver them over to evil. It was improper to unite the duties of making laws and electing to offices. There was an incongruity in giving the choice of governor and of the council to different bodies. They both constituted but one branch of the government. He was not strenuous for preserving the office of counsellor. But if it was preserved, they ought to be elected by the people, and there was no alternative but to choose them by districts. There were difficulties, but they were not insurmountable. He concluded by moving a resolution that it is expedient and proper so to amend the constitution as to reduce the number of counsellors from nine to seven.

The CHAIRMAN. That resolution has already passed.

Mr. BLAKE then moved to amend the resolution of the select com-

mittee, so as to declare that it is not expedient to make any alteration in the constitution in regard to the election of counsellors.

Mr. ADAMS was opposed to the amendment offered by Mr. BLAKE. He would much rather vote for an annihilation of the council. What is the council? It is an essential part of the executive. The governor is only *primus inter pares*. Every member has an equal vote with the governor and lieutenant governor. The executive consists of eleven heads. Who are to appoint nine or ten of these? The lieutenant governor is appointed, and rightly, by the people. But nine are not appointed by the people. Returning forty men out of whom they are to be chosen, is not expressing the voice of the people. Intermixing them with forty men chosen for senators, is no election by the people at all. His objection was founded on a fundamental principle of a free government. It was essential that the executive and legislative departments should be distinct and independent of each other. Can any one say that they are distinct and independent, when the Legislature have the power to appoint nine members in opposition to the governor—to obstruct and embarrass his measures? He did not say that this had been done, but it might be done. If the council were to be appointed in the manner in which they used to be, it would be necessary to take from them all power of controlling the governor, and to leave the responsibility with him. The two houses of the Legislature make an election of nine out of forty to form a part of the executive. It is such an intermingling of powers as no free government can long live under. If there have been no inconveniences heretofore, they will arise as the country increases—there will be more ambitious men, intrigues, plots, and caucuses. He was for districting the Commonwealth and giving the choice to the people. It is only by giving to the governor a decisive authority that he can administer with success. He had known no governor whom the people have chosen that was not worthy of his place. He had had great experience of the difficulties of checks upon the executive power in the government of the United States. The power given to the senate would be the total ruin of the constitution of the United States, or it must be amended.

Mr. BLAKE withdrew his amendment, and the question returned upon the proposition of Mr. MERTON.

Mr. STONE of Stow and Boxborough said it was the design of the founders of the constitution, that the people should have a voice in the choice of counsellors. It was true that if the choice was by the Legislature it emanated indirectly from the people; but this was an innovation and a subversion of republican principles. He answered the objection that the people were not competent to choose in large districts. The same objection would lie against the election of governor and senators. Yet the people choose judiciously. He was opposed to a general ticket, because all would be of one political opinion, and the minority would not be represented. By dis-

ment, all parts, all interests, and the different political feelings would be represented.

Mr. FOSTER moved that the committee rise. Negatived, 178 to 182.

Mr. BLISS spoke at some length in favor of the amendment. He saw no difficulty in forming districts—no objection to annexing counties.

Mr. PHILLIPS spoke against the amendment.

The committee rose, reported progress, and had leave to sit again.

Leave of absence was granted to Mr. NORMS and Mr. HUNT.

Mr. PHELPS of Belchertown was appointed in the place of Mr. HUNT, on the committee on leave of absence.

It was ordered that the standing hour of meeting in the morning, should be 9 o'clock. Adjourned.

#### THURSDAY, DECEMBER 7.

The Convention met at 9 o'clock, and attended prayers offered by the Rev. Mr. Palfrey. The journal having been read,

On motion of Mr. WEBSTER, the Convention took into consideration the resolutions reported by the committee on that part of the constitution which relates to oaths, subscriptions, &c., agreed to in committee of the whole.

Mr. TUCKERMAN of Chelsea moved to amend the resolution in such manner that persons elected to the office of governor, lieutenant governor, senator or representative, should, before entering upon the duties of the office, make and subscribe the following declaration:

"I, A. B., do declare that I believe in the Christian religion."

Mr. SALTOWSTALL of Salem observed that he had intended, as he knew some others had, to address the Convention when the subject was before them, but was prevented by the symptoms of impatience expressed. He had since thought seriously upon it, and believed his duty would not permit his silence, though silence is so great a virtue in this Convention. It was one upon which he could not sacrifice his private opinion to others, however he might respect and venerate them. As to the right of a Christian community to require their rulers to profess their belief in the common religion of the State—it rests on the same basis as the right to require any other qualification for office. The great object of civil society is the protection of the life, liberty and property of the members, and "to furnish them with the means of enjoying in tranquillity their natural rights and the blessings of life;" and those entering into it have a right to agree upon such a system of government as in their opinion will best promote these great objects. All are bound by their decision—it rests on the assent of all, express or implied. The people of this Commonwealth are a voluntary association, and have



a right to adopt such regulations as they think fit, otherwise they are a voluntary society acting against their will. They have a right to decide what offices they will have, and what shall be the qualifications for them. No objection can be made to the right of requiring this declaration, which will not lie against every other qualification. Mr. S. then proceeded to illustrate it by referring to the qualification of property, age, and residence required in the governor. All these rest on the same principle—the right of society to establish such rules as in their opinion will best promote the great objects of its institution. Why then have not a Christian community a right to require this declaration? Will it not give some additional security? What is the religion which they are required to profess? It is too late to dispute its good tendency on rulers and people. It teaches rulers “to rule in the fear of God.” This is a mere civil regulation, and was not intended to interfere with the rights of conscience and of private judgment. It abridges no man of his religious liberty. In every community there is a large class who are left in the enjoyment of their civil rights, who have yet no right to political privileges; they cannot be elected to office. The great object of society is not the right of being rulers, but of security against wrong. Much of the objection to this test, as it is improperly called, arises from confounding private judgment and the qualifications which the constitution creates for certain offices. To punish men for believing or not believing is cruelty; but to annex conditions to office, is perfectly justifiable, and, indeed, necessary. Mr. S. also argued the right from the circumstance of its long continuance. It is said government have nothing to do with opinions. The people always elect their officers with a view to their opinions, and why have not the majority in framing a government, the right to agree that they will not elect certain magistrates unless they will declare their belief in the Christian religion? If the people have this right, then it is a mere question of expediency—it is found in the constitution, and shall it now be preserved or expunged? But why expunge it? What evil has it done? It ought not to be expunged unless this is clearly shown. Has it deprived the Commonwealth of the services of good men? In what instances? It may have excluded from office unsuitable men. If it had excluded a man even as learned as Gibbon, from the Legislature, it would not have been unfortunate, if he was capable of making such an insidious, unmanly attack on our holy religion. As to jews, mahometans, deists, and atheists, they are all opposed to the common religion of the Commonwealth and believe it an imposition, a mere fable, and that its professors are all under a wretched delusion. Are such persons suitable rulers of a Christian State? But this test does much good. It has a good effect on those who take it. They will not be so profligate as afterwards to profess their infidelity, and stamp their characters with hypocrisy. It is in this way a great check to infidelity. Who can tell how much influence it may have had in producing the present elevated character of Massachusetts?

If we should now expunge it, it would be a triumph to infidels. Now, they would say, the people of Massachusetts have determined that a profession of christianity is not necessary to the enjoyment of the highest honors. The descendants of the Pilgrims have blotted out from the constitution the great recognition of the Christian religion. We ought to consider this subject with the circumstances with which it is combined—that it is in the constitution—that we are in Massachusetts, and what is proper here might be inexpedient in some other places. We ought to look at the history of Massachusetts and recollect that it is a religious Commonwealth—that it had its origin in devotion to the Christian religion, and that now the spirit of bigotry is gone, we have only the good influence of their principles and institutions. It is an imposing spectacle that annually takes place here, when the principal officers of the State, in the presence of their Maker, and of an immense assembly, profess their belief in the Christian religion. It is a great public homage to truth. And this religion is worthy of all our support and encouragement. It teaches all our duty. It commands all virtue and prohibits all vice. It is the greatest bond of civil society, and we ought to take great care not to lessen its influence.

Mr. QUINCY rose to a question of order. He had hoped that the report would have been suffered to lie on the table, until all the reports had been acted on. The subjects are materially connected. This is connected intimately with the third article.

PRESIDENT. The gentleman is himself now out of order.

Mr. QUINCY. I am going to move to lay this report on the table.

PRESIDENT. That will be in order.

The motion being made and seconded, Mr. Q. proceeded to argue that the best course would be to go through in committee with all the reports, before they were taken up in Convention.

Mr. RICHARDSON of Hingham spoke in favor of the motion.

The question was taken and decided in the affirmative.

Mr. DEARBORN of Roxbury inquired whether it would be in order to move that the resolutions offered by him yesterday be taken up.

After some conversation on the course most proper to be pursued, the resolutions were taken up and read, and a motion was made that it should be referred to a committee of the whole house. This motion was decided in the negative—139 to 176.

Mr. QUINCY stated that he had voted in the majority on the question just taken, and for the purpose that he might be in order to move a reconsideration of the vote. He then moved that the vote be reconsidered, and proceeded to state his reasons for it. In answer to a question whether it was a fair construction of the rule relative to reconsideration to vote in opposition to his opinion for the express purpose of giving him a right to call for the question again, he said that it certainly was, and that it was every day's practice, and for the reason that the gentleman who had made the motion had a right to be heard in support of it; but when he had waived that right, and any gentleman perceived that for want of explanation, the mo-

tion was likely to be lost, it was perfectly right and common practice for him to give his vote against the motion, that he might be in order to move a reconsideration, and to state the reasons for the motion.

Mr. DAWES of Boston said he yesterday voted in favor of the gentleman's proposition being laid on the table, but he thought it a most unfortunate circumstance that he had introduced it. He was in favor, however, of the gentleman being heard if he insisted upon it, though he yet hoped the motion would be withdrawn.

Mr. STORY of Salem said he hoped the motion for reconsideration would prevail. Extreme difficulties would arise if they attempted to preclude debate. It was the right of every member to be heard on any proposition he might make for the amendment of the constitution, and they would consult their own dignity, as well as the advantage of the Commonwealth, by giving an opportunity for a full discussion of every such proposition. They were sent there for that purpose and they would save time by pursuing this course; that otherwise they would be laying a foundation for another Convention. Members would go home complaining of not having been heard, and would argue over again their propositions. This might be attended with most disastrous consequences. He said the vote just passed was contrary to one of their own rules, which requires that every resolution proposing an alteration in the constitution, shall be discussed in committee of the whole, before it is debated and finally acted upon in Convention. If every other gentleman's mind was made up at once, upon hearing any motion read, it was not the case with himself; and he thought they ought to be content to hear every argument, which gentlemen had to urge on any proposition to alter the constitution.

The question was then taken for reconsidering the last vote and carried in the affirmative—310 to 18.

It was then ordered, that Mr. DEARBORN's resolutions be referred to a committee of the whole, be assigned for Monday at 11 o'clock, and in the meantime be printed.

*Choice of Council.*—On motion of Mr. STORY the house went into committee of the whole on the report of the standing committee, on the fifth resolution respecting the council, &c.

The question before the committee was upon Mr. MORRIS's amendment to the third resolution reported by the standing committee. The amendment proposed that the counsellors should be chosen by the people in convenient districts, one counsellor in each district.

Mr. HOLT of Deerfield was opposed to the amendment for several reasons. It would be impossible to make a satisfactory division of the Commonwealth into districts. It was very easy for gentlemen to talk about districting, but if a committee of that body were to take the census with them into one of the lobbies, and attempt to make districts, every one of them would be dissatisfied with any division that should be proposed. He said there would be a difficulty likewise

in agreeing upon candidates, and described the mode practised in the nomination of senators. That the counsellors might all be of the same profession—that the principle of electing them by the people was not carried far enough for consistency, as the people ought to supply vacancies just as much as to elect in the first instance—that the rights of the people were in fact taken away by this mode, by entangling them with too much regulation.

Mr. WEBSTER said that in his judgment the decision of the committee would essentially depend on a right understanding of the precise question before it. Very various opinions had been entertained in this country on the subject of these councils, and it would be a very wide field of debate, if it were all open. In one state, (New Hampshire) the counsellors were chosen in districts or counties, by the people. In New York, they were elected by the house of representatives, out of the senate; in Vermont, they were chosen by general ticket. As far as he recollected there were but two states, Pennsylvania and Delaware, in which the governor exercised full executive powers, and had no council at all. The power of appointments, in several states, rested principally with the Legislature. In this Commonwealth there had for forty years been a council. It was not now proposed to abolish it. This council possessed a negative. It was not proposed to take away that negative. The Convention had decided that this council should consist of seven members. Upon this state of the case the question arises, how shall these seven members be chosen? The honorable member from Dorchester proposed to choose them in districts—and to this he (Mr. W.) was opposed. Whatever he might think under other circumstances, since the council was to consist of seven persons only, he was hostile to district election. His main objection was, that it might operate completely to paralyze the executive government. It was matter of mathematical certainty, that supposing the State to be divided into seven districts, to elect seven counsellors; and supposing an election to be contested in the State, on the ground of any leading question or subject, the governor might be chosen by a majority of ten thousand, and yet a majority of the council be against him; and this though the districts be fairly and equally made. There might be, for example, four counsellors chosen, in four districts, each by a majority of one hundred votes; and there might be three chosen, in the other districts, of opposite sentiments, each by a majority of two or three thousand votes. This was not only possible, but quite probable. It had happened elsewhere, in effect and substance, not once only, but he believed three times in the course of seven or eight years. He alluded to a neighboring state, in which counsellors were chosen by districts or counties. This was an entire disarming of the executive power. To choose a governor, by the whole people, where every vote counts, and then to place round him a council, chosen in local districts, the general result of which might not express the real wishes and opinions of the whole people, was a paradox, not easily reconciled. To vest the executive power

in the governor chosen by all the people, and yet to put him under the control of seven guardians, chosen in local districts, and often with a view to local purposes, appeared to him to be acting at cross purposes. He maintained that it was taking away from the whole people, the right of choosing the executive. It was more truly a choice by the whole people when made by the immediate representatives of the whole people than when made in local districts. He had nothing to say at present upon choosing counsellors by general ticket; he had nothing to say upon the present existing mode. The question was simply on the propriety of district elections; and he did maintain that such was not a fair or effectual mode of constituting a council which should be consonant with the wishes of a majority of the people. It was a mode in which a minority might, not in one case only, but in many cases, not for one year only, but for many years, possess one branch of the executive government, and hold a negative on all important measures proposed by the chief magistrate elected by the whole people.

Mr. HUSSEY considered it a valuable feature of the constitution that there should be a council, and that council should be so constituted that there should be a harmony between the governor and council. In the Legislative bodies the different parties and interests should be represented; but in the executive department there was no advantage in this. If there were conflicting parties in the executive branch of the government the public business would suffer. The object of having a council who would act harmoniously with the governor would be usually attained by choosing them in convention of the two houses of the Legislature. If they were chosen in districts, there would frequently be no choice, and when chosen there would be a want of unanimity.

Mr. APTHORP of Boston was not convinced by the arguments which had been hitherto advanced, that the mode proposed by the select committee was not the best. Gentlemen who talked so much about the people's rights might as well contend that the people should choose the secretary, treasurer and major generals. The choice of counsellors was at present virtually by the Legislature, since it was the custom for those elected from the senate to decline. The people had entrusted the Legislature with the power of making the most important laws, relating to the life and property of the citizen; this was a much greater power than that of choosing counsellors. And by the amendment itself, the resort was to the Legislature to supply vacancies. He hoped the amendment would not be adopted.

Mr. AUSTIN of Boston said that when the mode of choosing counsellors was under consideration, the importance of the office should also be kept in view. All appointments to office and removals from office passed in review before the governor and council. The power of pardoning criminals was lodged in their hands; questions relating to the militia, came before them; and many other important questions of such magnitude, some of them, as to have shaken the foun-

dations of the political temple. The question then is, how the counsellors shall be chosen; whether by the Legislature or by the people? And if by the people, whether by a general ticket or by districts? The objections to the first mode were insuperable. It was mixing the branches of the government, and it would introduce cabals and intrigues into the Legislature. The Legislature were not to be intrusted with this power. Why? Because they have abused it. What was the theory of our constitution? That nine members should be selected from the senate who should *serve* as counsellors. Such was originally the practice. There were accidental vacancies of course. But in 1804 a majority, and in 1805 the whole of the senators selected to sit at the council board declined; in violation of the intention of the constitution. Another great principle; although the idea might be sneered at, he would yet insist, that the people had a right to choose the council, and by a direct, not a circuitous mode. It was asked by the gentleman from Boston, (Mr. APTHORP,) why are the Legislature permitted to choose the secretary, treasurer, &c. The cases were not parallel. These officers were accountable for their conduct; it was not so with members of the council. Again, it was said that a choice by the Legislature was a choice by the people. He denied it. Men had been selected for this county who had not an inhabitancy here, and would not have been elected by the people. In regard to the two modes of choosing by the people, Mr. A. argued in favor of choosing by districts. It had been objected by the gentleman from Salem, (Mr. PICKMAN) that districts would be made for party purposes; did the gentleman mean to argue from the abuse of the thing? We have districts for senators and for representatives to Congress. Will the gentleman follow up his argument? Will he say that his friends who have made these districts, have done it for party purposes? He will not, because it is not true. But if the Legislature will divide the State into districts for party purposes, they will choose counsellors for party purposes. His object however was to have permanent districts. Some gentleman had said that the districts would be too large; but if the whole people can vote for governor without inconvenience, cannot one seventh part vote for a counsellor? And what reason was there for taking one counsellor from one part of the State and another from another? To carry local information to the council board—information which would be useful in making appointments, and in many other questions to be acted upon by the executive. It was said the counsellors might happen to be all of one profession; so might all the senators, and yet the practical operation of the mode of choosing them was otherwise. Again, it was said the council might be divided in political sentiments; this he considered one of the greatest arguments in favor of a choice by districts. It would produce discussion—different ideas would be started—men would tax their ingenuity to support their opinions; this would enable the cool presiding genius to decide with correctness, and execute with firmness. It was said by the gentle-

man from Boston, (Mr. WEBSTER,) that districting would destroy the people's rights by giving to a minority of the people a majority in the council; he could not see the force of the remark, or how the case differed from all elections by districts. One more remark; having the minority of the people represented in the council, though it would not control, as it ought not to do, would yet prevent measures from being carried with a high hand, and the bitterness of party would be allayed. The choice will thus be put on the ground the constitution intended. The choice will be by the people—it is the people's right. You may transfer this right to another body, but you may as well transfer any other of their rights. You may remove one of the main pillars of a temple, and yet the building may stand; but it will be in a dilapidated condition and the beauty of the architecture will be lost.

Mr. STORR of Salem went into a full argument against the amendment. We shall give only the general heads of his speech. He stated the immediate question to be whether the proposition of the select committee for the choice of a council of seven persons by the Legislature should be struck out, and that of the gentleman from Dorchester, to choose seven counsellors by the people in districts, should be substituted. This question had been treated as if it were a question about the rights of the people. It was not in the power of the Convention to take away the rights of the people, and no one had any inclination to do it. The question was whether the people will retain in their own hands the power of electing counsellors directly, or will delegate it to the two branches of the Legislature. And the determination of this question rests on their free pleasure. There may be a difference of opinion. But it is not a diminution of the rights of the people to delegate a part of their power. It is in this way only that civil government is founded—it is a delegation of powers to allow the senate and representatives to make laws, and if the people may delegate the power of making all the laws, may they not that of making appointments? Why do not the people reserve to themselves all appointments—the delegation to the chief magistrate is a surrender of power, but it is useful and necessary. Everything dear to us must be overturned if this right of delegation is not to be preserved. The question is whether the people can exercise their own rights most conveniently in one mode or in the other. He proceeded to inquire whether the recent practice in appointing counsellors was a violation of the constitution, and contended that the practice was perfectly conformable both to the text and spirit of the constitution. He insisted that the constitution left it entirely to the option of the senators elected to the council, to decline, and that this was a wise provision. If it had been otherwise the more numerous branch of the Legislature would always have the senate in its power. Not only on political questions, but on others which might arise. They might wish to compel the senate to yield to their own views. One such question had already arisen, several years in succession. They would only

have to choose nine of the most able members of the senate, or such as they believed most opposed to their views, and it would leave the senate at their mercy. Was it to be supposed that the framers of the constitution were not aware of this? They left it to every man to judge for himself of the expediency of leaving the senate to go into the council. Besides this, there were many gentlemen who might be willing to give their time and talents to the public during the sessions of the senate, who would yet be unwilling to accept a seat in the council, and render themselves liable to be called to perform its duties through every part of the year. He next alluded to the argument of the gentleman from Boston, (Mr. BLAKE) who contended that to choose by the Legislature was robbing the people of their rights, and yet closed his speech with proposing that this part of the constitution should remain.

Mr. BLAKE explained. He proceeded on the ground that the people had the right by the constitution to act in the election of the council, and submitted the proposition on the ground that if nothing else could be done, we should revert to the mode prescribed in the constitution.

Mr. STORY did not agree in the gentleman's premises, nor his conclusion. Does not the constitution proceed on the ground that the representatives are worthy to be trusted? To suppose they are not, looks like a denial, not of right, but of good sense to the people. He alluded to what had been said of caucuses—and legislative caucuses. He vindicated the practice of holding caucuses for the purpose of making nomination, as useful and necessary. If the Legislature abuse the powers with which they are entrusted, the people will choose other men who will not. He was not aware that there had been abuses. Where there were political parties it was natural that friends should consult together, and it was proper that they should. If it is the representatives of the majority, they are bound to see that the will of the majority is carried into effect, and if they do not act with concert, the minority will slip in against the will of the people. He was not aware that any injury had resulted from this practice. When he looked back to the illustrious men who had filled the chair of chief magistrate—the illustrious men in the council—when he considered the uniform practice of sending good men to the council, he denied that there could have been any abuse. He relied upon the fact and demanded of gentlemen to point out an instance, when men unworthy of the station had been chosen to the office. It had been his misfortune, perhaps his fault, to be a great proportion of the time in the minority in this Commonwealth, and he had always been proud of the men who under the auspices of those opposed to him had been raised to the high offices in the Commonwealth. If districts were to be formed, caucuses must continue to exist. There was no other way in which nominations could be made unless you take the nomination from an individual. They tend to conciliation and unanimity. They are no evil but the necessary consequence of popular elec-



tions, and they can only be disused when we become so corrupt as to surrender our rights into the hands of some civil or military chief—a period which he trusted never would arrive. He proceeded to notice an error which had crept into the debate—that the counselors are now chosen directly by the people. He then stated several specific objections to the proposition of the gentleman from Dorchester now before the committee. First, it has on the face of it the plausible appearance, that the people choose, but robs the majority of the people of the right. This had been forcibly demonstrated by the gentleman from Boston (Mr. WEBSTER) and Mr. S. proceeded to illustrate it farther. He showed that the governor might be chosen by a majority of 10, or 15,000 votes, and yet a majority of the council chosen in districts by the same voters might be of opposite opinions to those of the governor. 2d. It would hazard the governor being surrounded by a majority of men of different opinions. It would become the leading object of party contention, instead of having a governor of particular opinions, to surround him by a council who would thwart him in all his measures. The popular leader of a district would be the real governor. The governor chosen by the people would always find one behind the throne greater than himself. It would be in effect to abolish the office of governor and set seven wise men in his stead. 3d. In this way the people would lose the power of making the most judicious selection of counsellors—of adapting the selection of each according to the persons to be associated with him. 4th. It would be throwing out another lure for perpetual party spirit—it would become necessary to carve out seven equal districts, to be changed every ten years throughout all time; and the formations of these districts would be the great object of political power. To suppose that the power of forming them would never be abused, would be disregarding all human prudence. Without alluding to what had already happened, it was easy to foresee that such would be the effect of the proposition. 5th. A further objection was founded on the present distribution of powers under the constitution. The senatorial districts were never to be less than ten, and the Legislature were never to have the discretion to cut and carve in such manner as to unite part of one county with another. Counties were framed for particular purposes, and by the habit of association acquired a feeling of common interest. But this feeling could not be extended beyond the limits of counties. Yet to form these districts one county must be united with another, and often lose all its powers by being attached to one to which it has a particular dislike. For these reasons (which are here but briefly and very imperfectly stated) he was entirely opposed to Mr. MORTON's proposition.

Mr. LINCOLN of Worcester opposed the amendment. He thought it would be easy to satisfy the gentlemen who were in favor of it that it was impracticable to carry the proposition into effect in a manner that should be satisfactory. He proceeded to a particular examination of the modes in which the districting might be attempted,

to show the insuperable difficulties which must be encountered. He next inquired in what manner nominations would be made in the several districts, for the purpose of showing that the result must be less satisfactory than if made by the representatives of the people chosen for the purpose. He contended that the appointment by the Legislature was the mode most consistent with the rights of the people, and argued that under the constitution the people have never directly chosen counsellors—that the mode of electing by the two houses of the Legislature has been sanctioned by the people—that it would have a most injurious effect to introduce into the council men of opposite opinions to thwart the views of the executive, and that it would introduce a principle by which improper approaches would be made to the executive through the counsellors thus selected.

Mr. DUTTON rose to call the attention of the committee to the precise state of the question. It was on the motion of the gentleman from Dorchester to amend by striking out the proposition of the select committee to choose by joint ballot, and substituting the mode of choosing by districts. If the motion was rejected the question would still be open for proposing any other mode; but if the motion was agreed to, it excluded, not only the proposition of the select committee, but all other modes. He was opposed to the amendment, but if gentlemen did not wish to speak further in support of it, he was willing to waive his right to speak against it. Otherwise he should claim his privilege.

Mr. QUINCY expressed his opinion against altering the principle of election already established by the constitution.

Mr. BLISS rose in support of the amendment because he had been particularly called upon. He thought there would be no difficulty in forming the districts.

Mr. BLAKE moved that the committee rise. He wished to have an opportunity to answer the arguments of gentlemen, and it could not be done without going into the details of the subject, which he would not think of entering upon at this hour of the day.

Mr. PARKER thought the question had been fully discussed and that the committee was ripe for a decision. If not he was willing to sit there until the sun went down for the purpose of bringing the discussion to a close.

The motion that the committee should rise was put and decided in the negative—97 to 256.

Mr. MITCHELL of Nantucket thought that the state of the question had not been correctly explained by the gentleman from Boston, (Mr. DUTTON;) he wished to be informed.

Mr. WEBSTER said that the proposition was to amend so that the election should be in districts. All who were in favor of districts would vote for the motion, and all who were for any other mode would vote against it.

Mr. AUSTIN called for a division of the question. The CHAIRMAN pronounced it indivisible.

Mr. TILLINGHAST of Wrentham said he should vote against the resolution, because he wished to have an opportunity of moving to amend, so that the choice should be by the people on a general ticket.

The question on Mr. MORTON's amendment was then taken and decided in the negative, 149 to 241.

Mr. FOSTER moved that the committee rise—decided in the negative—146 to 241.

Mr. TILLINGHAST then moved as a substitute for the resolution of the select committee, that the constitution be so amended that the governor, lieutenant governor and seven counsellors be annually chosen by the people on one ticket, one counsellor only to be chosen from one senatorial district.

The question was taken and decided in the negative—136 to 222.

A resolution was then moved by Mr. BLISS in substance, that the counsellors be chosen in the manner now provided by the constitution, except that there should be but one counsellor in a district.

A motion to rise was decided in the negative—172 to 200.

Mr. BLISS's motion was then put, and negatived.

Mr. BLAKE offered a resolution providing that the choice should be by a general ticket, and stating some of the details of the mode of choice.

Mr. FOSTER renewed the motion that the committee rise. Negatived, 174 to 195.

Mr. BLAKE spoke in support of his motion at some length.

Mr. ADAMS of Quincy, who had been referred to by the gentleman who last spoke, said he was very sorry that any gentleman of the committee should allude to him. That he was the representative of a small town, and that no more weight ought to be given to his opinion, than to that of any other delegate. He had been very cautious in speaking from memory in regard to the history of the Convention of 1780, but he thought there was a great variety of opinions in that Convention, respecting the council. He believed that no member of it ever supposed that any senator, chosen a counsellor, should decline; much less that the whole nine should decline, and retain their seats in the senate. He did not believe there was a member of that Convention, who would have wished the people to be deprived of the right of electing the counsellors. He should vote in favor of the amendment.

The motion to rise was repeated and decided in the negative, 125 to 225.

The question on Mr. BLAKE's amendment was taken and carried, 193 to 179.

The committee then rose and reported their agreement to the resolutions as amended.

It was ordered that the report should lie on the table and be printed.

Adjourned.

FRIDAY, DECEMBER 8.

The Convention met at 9 o'clock, and attended prayers offered by the Rev. Mr. Jenks. After the reading of the journal,

Mr. WARD of Boston, chairman of the standing committee on the sixth resolution, to whom the subject was committed, reported the following resolution :

*Resolved*, That the constitution be so amended in the ninth article of the first section of the second chapter of the second part, that the governor shall have power, by and with the advice and consent of the council, to fill up all vacancies which may happen, in the recess of the General Court, in the offices of secretary and treasurer, by granting commissions which shall expire in \_\_\_\_\_ days after the commencement of their next session.

The report being read, was committed to the whole on the report of the select committee on that part of the constitution relating to the governor, militia, &c.

Mr. ROOF of Granville, and Mr. Gardner of South Brimfield, had leave of absence on account of ill health.

On motion of Mr. VARNUM, the Convention resolved itself into committee of the whole, on the report of the select committee on that part of the constitution which relates to the governor, militia, &c. Mr. BLAKE of Boston, in the chair.

The report having been read, the first resolution reported was taken into consideration as follows :

*Resolved*, That it is expedient to alter and amend the second article of the said first section by striking out the words "one thousand pounds" and inserting instead thereof, " \_\_\_\_\_ thousand dollars "; and also by striking out the words "unless he shall declare himself to be of the Christian religion."

Mr. VARNUM said that the object of the first change was to accommodate the sum stated as the qualification, to the present currency of the country, and that the committee did not propose to make any material change in the amount. In the latter part of the resolution they proposed to accommodate the constitution to the principle that had already been settled by a vote of the Convention.

Mr. QUINCY of Boston hoped the question would be divided, so as not to put the Christian religion on the same footing with pounds, shillings and pence.

Mr. VARNUM said it was proposed to fill the blank with four thousand dollars.

Mr. PARKER thought it unnecessary to make an alteration merely on account of the currency, or for the sake of adding five or six hundred dollars to the present sum.

Mr. QUINCY said if a new constitution were to be formed, it might be proper to pay regard to the technical accuracy proposed in the resolution ; but what were they sent there for ? Not to introduce perfectibility into the constitution, (if he might use a word that was not English) but to make such substantial alterations as were necessary. There would be no end of verbal alterations, and the people would only be confused, if called upon to vote upon all the minute alterations proposed in that and other reports of the standing committees. There were but two amendments which he was desirous

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of making. One was to alter the senate, so as so meet the present circumstances; and this because it was necessary. Another was to provide for making future amendments. But gentlemen were proposing to strike out this word and that word for the sake of verbal accuracy. Here it was proposed to strike out the Christian religion.

Some member called the gentleman to order, the question being for filling the blank.

Mr. DAWES of Boston said he thought they were talking of dollars and cents.

Mr. QUINCY contended he was in order.

Mr. DAWES. The gentleman was not in order.

Mr. QUINCY said he had as lief be called to order as not, with respect to himself; but he was contending for the rights of that assembly. He was contending that the making so many minute alterations would throw the people into intellectual confusion.

The CHAIRMAN said if the gentleman introduced the Christian religion for the sake of argument against the resolution, he was in order.

Mr. QUINCY said he trusted that body were not to be confined by the strict rules of courts of justice where the mode of proceeding was like walking a crack, or like a cart horse on a railway. If he generalized, it was to show the absurdity of the particular proposition.

Mr. SALTONSTALL rose to move that the consideration of this resolution should be postponed until certain principles involved in other reports should be settled. The propriety of adopting the first part of the resolution depended upon the mode in which the amendments were to be incorporated in the constitution and submitted to the people. The propriety of adopting the second part depended upon the decision which should be made on a report which was now laid on the table, and which would be the subject of discussion. It would be improper to go into the discussion of that subject, as it was incidentally introduced in this resolution, and we could not act upon this resolution until the principle was settled.

Mr. NICHOLS wished that the motion to postpone might be withdrawn until he should have an opportunity of moving an amendment to the resolution. Mr. SALTONSTALL having withdrawn his motion, Mr. N. moved that the resolution should be so amended as to declare that the constitution ought to be so altered, as that no pecuniary qualification should be required for office.

Mr. DANA considered this an inadmissible proposition. The report related only to a particular office. The proposition was to make an amendment that it should extend to all offices.

Mr. NICHOLS so modified his amendment that it should extend only to the office of governor. He then moved that the resolution should lie on the table.

Mr. WEBSTER said the committee could not lay the resolution on the table. A motion to postpone the consideration of the resolution would gain the gentleman's object.

Mr. PARKER thought the principle involved in the amendment

might as well be settled now as ever. It could not be necessary to postpone it to accommodate the gentlemen who made the motion, for he apprehended that no gentleman would make a proposition to make a specific amendment to the constitution, without having well considered his reasons.

Mr. NICHOLS said it was an anti-republican principle, to exclude from office by requiring any qualification of this kind. Every republican will wish the fees of office to be sufficient to support the dignity of the office. No pecuniary qualification was required by the constitution of the United States for the highest magistrate under it, neither was any such required by our constitution, in regard to the judges of the supreme court. There was as much reason for requiring it in these cases as in relation to the office of governor. It might happen, that the wisest and best man among us might be poor, and on that account we must be deprived of his services. He had urged the same argument, the other day, against the test, that it was anti-republican, and he hoped the relics of the bigotry of our ancestors would now be done away.

Mr. DANA of Groton spoke in favor of retaining a pecuniary qualification.

Mr. D. DAVIS of Boston said he presumed one reason of the qualification was, that if the governor should be within the limits, he could not discharge the duties of his office.

Mr. NICHOLS's amendment was negatived.

Mr. VARNUM moved to fill the blank with four thousand dollars.

Mr. PRINCE of Boston hoped we should not adopt this amendment. He did not think it was necessary. The mere change of denomination was of no consequence.

Mr. FOSTER was opposed to increasing the sum above one thousand pounds. He should prefer inserting three thousand dollars.

Mr. STURGIS of Boston thought that to insert four thousand dollars was not fixing the qualification higher than it was at the time of the adoption of the constitution. The depreciation in the value of money was more than equivalent to the increase in the sum proposed.

The question on filling the blank with four thousand dollars was taken and decided in the negative.

Mr. PRESCOTT of Boston said he voted against filling the blank with the sum proposed, not because he thought it was too high, but because he thought that no alteration of the constitution in this respect was necessary. He was not surprised that this amendment was proposed. It would have been perfectly proper if we were now to make a new draft of the constitution and alter it where it was thought susceptible of improvement in phraseology or minute details. But it seemed to be generally understood that a different mode of amendment should be adopted which would render trifling alterations of this sort unnecessary and improper.

Mr. VARNUM said that we were sent here to make all necessary and expedient alterations in the constitution. We appointed committees on the different parts of the constitution and instructed them to pro-



pose all such alterations as they should think expedient. On this ground, the committees had proceeded in drawing up their reports. Two gentlemen had alluded in debate to a mode of proposing the amendments to the people as settled. He was not aware that anything had been settled on this point. He knew there was a report which proposed a mode of proceeding, that would render it necessary for towns, before giving their votes for the acceptance or rejection of the amendments proposed by the Convention, to go into the discussion of each particular part. This report had not been accepted by the Convention and he hoped they would not adopt that course. If the committee had proposed alterations which the Convention did not see fit to approve, he should have nothing to object on that subject. But he supposed that the Convention having submitted the several parts to committees and they having reported, the Convention would act on each specific alteration proposed in their reports.

Mr. ADAMS of Quincy rose to inquire whether pounds, shillings and pence were a legal currency ; because the national computation had been adopted, which was in a decimal ratio.

Mr. MATTOON of Amherst said the standing committee had proposed this alteration, to agree with the national computation. Our children would hardly know the meaning of pounds.

Mr. JACKSON of Boston thought that this amendment involved the discussion of a question, which the House would be obliged to meet in another shape. The propriety of the amendment depended upon the question, whether the constitution was to be taken into a new draft, or whether the amendments were to be proposed to the people and adopted in the form of independent propositions. If the constitution were to be drafted anew, there could be no doubt that it would be proper to substitute the term *dollars* for *pounds* in this instance and others in which it occurs, and to make various other verbal alterations, which in the other mode of proceeding would not be of any importance. Yet he saw no objection to proceeding at present without regard to this consideration, and considering in committee of the whole, how many alterations it is expedient to make. The other question may depend upon this ; and when the Convention come to reduce the amendments to form, whatever form shall be adopted, it will not be bound by the decision here. The present mode of expression is not liable to any ambiguity or uncertainty, because in another part of the constitution it is provided that where *sums* of money are mentioned they shall be taken at the rate of six and eight pence per ounce in silver.

Mr. D. DAVIS of Boston said that he had been, at an early period of the proceedings, of opinion that difficulties would arise from its not being distinctly understood in what manner the amendments agreed to should be incorporated into the constitution. Many amendments had been proposed on the presumption that the constitution was to be adopted anew. His opinion had been uniformly against this course, and he should vote for no alteration which had not been

rendered necessary or proper by a change of the circumstances of the country, and the propriety of which should not be acceded to with some degree of unanimity. He thought it was time that it was settled in what manner the amendments were to be framed, and that some definite determination would be found necessary before we could act upon this report and upon some others, particularly that upon the declaration of rights. The report last mentioned proposed a number of alterations that are entirely verbal. He wished the sense of the Convention could be taken upon the propositions submitted by the committee instructed to consider in what manner the amendments shall be submitted to the people. Until some digested plan should be agreed on, they would be constantly afloat respecting particular and verbal amendments. If they proceeded to discuss verbal and minute alterations, and it should be decided against making a new draft, the time so employed would be lost.

Mr. WEBSTER was satisfied that this and other reports were such as it would be impossible to act upon. It was not from any want of care, or of ability on the part of those who have brought forward the reports, but from an uncertainty which has existed with respect to the mode of carrying the amendments into effect. He thought that one thing was indispensable—that every report should contain plain, simple and independent propositions, which could be understood without any reference to the part of the constitution to which they apply. Propositions had been made to amend the constitution by striking out parts and changing words, as if it had been a bill before the House—in which the clerk might erase or insert with his pen at pleasure. (Mr. W. was here called to order and interrupted by some discussion of a question of order, on the supposition that the question before the committee was on filling the blank in the resolution. The chairman decided that Mr. W. was in order and he proceeded to speak on the resolution.) He said that if the House voted to make an alteration by striking out one line and inserting another, they would find themselves entangled by the form of the resolution. No committee appointed to draft the final amendment could put it into a different form. He thought it would be impossible to act on the report but by recommitting it to the select committee with instructions that they should report in a form in which it could be understood. If we resolve that we will amend the constitution by striking out an *S* in such a paragraph and such a line, and inserting a word in such another line—by striking out *nine* in such a paragraph and inserting *seven*, it is not a proposition that can be submitted to the people in a form in which they can understand it. He proceeded to illustrate the difficulty and the means of avoiding it by other examples. The difficulty would exist in whatever form it was attempted to submit the amendment to the people.

Mr. WHITTEMORE of West Cambridge moved to fill the blank with three thousand dollars.

Mr. DANA was ready to assent to this proposition, because it was provided in another part of the constitution, to which he referred, that the sum might be increased by the Legislature.

Mr. STARKWEATHER moved that the committee rise.

This motion was decided in the affirmative, 242 to 94.

The committee rose, and leave to sit again was refused.

Mr. WEBSTER moved to recommit the report to the same committee. He meant no disrespect to the committee. He knew the difficulties which belonged to the subject; but he thought they would be able to present it in the form in which it might be acted on more satisfactorily.

Mr. VARNUM wished, if it was recommitted, the Convention would give the committee some instructions. They had already acted according to their own opinion of what was best.

The PRESIDENT. The committee would see what course was adopted by the Convention, in relation to the report respecting the form of submitting the amendments to the people.

Mr. VARNUM said it would be better that the report should lie on the table.

Mr. WEBSTER withdrew his motion to recommit, and moved that the report lie on the table. Agreed to.

Mr. JACKSON moved that the report on the mode of submitting the amendments to the people, should be taken into consideration.

Mr. VARNUM. How is it possible to determine upon this subject until it is decided what shall be the amendments?

Mr. JACKSON said that the questions presented by this report, undoubtedly depended in part upon what amendments should be made. But he did not know why the Convention were not able now to decide upon the question whether the amendments should be submitted in the manner proposed, and if decided in favor of this mode, it would save the trouble of discussing verbal amendments. Whether the amendments which involve any principle, were large or small—there would be no difficulty in acting on them in this form.

The question was taken and decided in the affirmative, 229 to 101.

The resolutions reported by the committee, were then read, and the Convention proceeded to consider the first resolution.

Mr. JACKSON moved to fill the first blank so that the people should give in their votes upon the amendments, on the second Monday of April next.

Mr. STURGIS of Boston thought it inexpedient to fill the blank at present, as from the course they were pursuing, the Convention might continue in session until the day which had been named.

The question was taken upon Mr. JACKSON's motion, and carried in the affirmative, 182 to 113.

Mr. WEBSTER said the principal object in taking up the report, had reference to the mode, and not the time of submitting the amendments to the people; he therefore moved to postpone the present resolution and pass to the fourth.

Mr. PRINCE of Boston had not expected this subject would be taken up at present, and had consequently not made up his mind upon it. The mode of submitting the amendments to the people, would depend upon their number and importance. He believed a

new draft might be made, and the constitution yet remain the constitution of 1780, as amended in 1820. If this course were not adopted, he apprehended, that instead of one Convention here, there would be four hundred in the Commonwealth.

Mr. QUINCY said all the resolutions composed one system, and they had better be taken up in their order.

Mr. WEBSTER said the fourth resolution was not at all connected with the preceding ones, and that all our committees were embarrassed for want of knowing the form in which the amendments were to be submitted to the people.

The motion to take up the fourth resolution was put, and decided in the affirmative, 182 to 71.

The fourth resolution was as follows, viz. :

*Resolved*, That all the amendments made by this Convention, shall be proposed in distinct articles; each article to consist, as far as may be, of one independent proposition; and the whole to be so arranged that, upon the adoption or rejection of any one or more of them, the other parts of the constitution may remain complete, and consistent with each other. And if any two or more propositions shall appear to be so connected together, that the adoption of one and the rejection of another of them, would produce a repugnance between different parts of the constitution, or would introduce an alteration therein, not intended to be proposed by this Convention, such two or more propositions shall be combined in one article. And each of the said articles shall be considered as a distinct amendment, to be adopted in the whole, or rejected in the whole, as the people shall think proper.

Mr. STURGIS was opposed to adopting the resolution at this time. He could see no objection to acting upon the principles in the reports of the select committees, and letting them lie on the table till all were gone through. The principles adopted might then be put together and composed to symmetry.

Mr. JACKSON said, that when the committee met, three different modes presented themselves, for submitting the amendments to the people for their adoption. The first was, to make a new draft, repealing all the present constitution; the second, to put all the amendments into one article. To both of these modes there was the same objection. For, if a large number of amendments should be submitted, which he hoped, however, would not be the case, the people would be obliged to adopt all of them or reject all of them. For instance, if ten amendments should be proposed, nine of which should be agreeable to the people, but the tenth not so, they would be compelled to adopt the tenth for the sake of the nine, or reject the nine, on account of the tenth. It was desirable to have the people adopt such amendments as were agreeable to them and such only; the third mode therefore seemed to be the fairest, which was, to offer the amendments singly. It was thought by the committee, that it would not be a fair exercise of the powers of the Convention and would not be doing justice to their constituents, unless every proposition were submitted separately for their adoption or rejection. But here a difficulty occurred, that one proposition might have a necessary connection with another, in such a manner that if one were accepted and the other rejected, it might produce an ab-

surdity. For instance, suppose there should be a balancing of the senate and the house of representatives—that the house should be reduced if the senate was reduced; in cases of this kind, it was manifest that there should be an exception to the foregoing principle, and that all the propositions so connected, ought to be united in one article. It also occurred, that there might be some amendments which the people would not understand, for want of knowing their connection with the constitution; it was thought expedient that such amendments should be prepared in such a manner that the people might see at once their connection with the constitution. It was thought by the committee, that the amendments should be presented in such a manner as to show, at the same time, both the old provision of the constitution and the alteration proposed. For instance, that the meeting of the Legislature shall be in January instead of May. With this would have to be coupled the amendment making a change in the time of the elections. In this manner there would be no need of altering the constitution at all, so as to say that this word or that word shall be inserted or struck out.

Mr. QUINCY thought there was a better mode than the one proposed, and that this mode was utterly impracticable. He thought it would be better to have only two articles, one of them containing the mode for amending the constitution in future; and the other containing all the other amendments.

Mr. WEBSTER said that when the constitution of New Hampshire was revised, the Convention submitted the amendments to the people, for their adoption, separately, and it was found at the adjourned session of the Convention, that some were adopted and some rejected, so as to make incongruous those which were adopted. The Convention then pursued the course reported by the committee, of uniting in one article all that were necessarily connected, and no farther difficulty occurred.

Mr. VARNUM agreed with the gentleman from Boston, (Mr. QUINCY,) on the propriety of submitting all the amendments together for the adoption of the people. He wished for information respecting the third section of the act for calling the Convention; he seemed to think that by that section the people were not at liberty to accept a part and reject a part of the amendments offered to them, but that they must accept or reject the whole.

Mr. FOSTER thought it would be unreasonable to deprive the people of the power of acting upon each distinct amendment. They should have the same privilege of voting upon each proposition that the members of the Convention have.

Mr. D. DAVIS wished to ascertain what would be the effect and operation of the report. As far as he understood it, he was heartily in favor of the resolution under consideration, because it would leave us to pursue a course that was clear and practicable. Distinct amendments were to be submitted to the people, for their adoption or rejection. Those adopted would form a part of the constitution,

those rejected would become a dead letter. The result would be clearly understood and would accomplish the object intended by this revision. The effect of the other mode, if his opinion was correct, would be different. If all the amendments were submitted in one article, they might or might not be adopted. If adopted, there would perhaps be no difficulty; but if rejected, the present constitution would remain unaltered—a state of things exceedingly to be deprecated.

Mr. WILDE rose to make some reply to the argument of the gentleman from Dracut. He thought that it was an unfortunate mistake in the act, if it was a true construction which the gentleman had given it. But he contended that it was not a correct construction of the paragraph, that the present constitution "shall be and remain the constitution of the Commonwealth," if any one of the amendments was rejected. The act provides that if the amendments are "ratified by the people in the manner directed by the Convention, the constitution shall be deemed and taken to be altered or amended accordingly." A part of that manner of ratifying will be, that if they adopt any one or more of the amendments proposed, it shall be amended accordingly. He was satisfied that all who were in favor of the constitution, as it now stands, and against any amendment, would be most likely to gain their object by connecting the amendments in one article. This would be the most likely mode to lead to the rejection of the whole; but the committee were unanimously of opinion that this would be an improper mode. He proceeded to explain the operation of this mode of submitting the amendments. It would give the people an opportunity to adopt such as they choose, and would not compel them to reject such as they approve, because connected with such as they disapprove. Verbal amendments, such as the substitution of "authority of the Legislature," for "legislative authority," and "citizen" for "subject," could not be submitted to the people in this mode. But it was not important to touch the constitution for these purposes, unless where the construction is doubtful, nor was it wise or useful to go into these alterations.

Mr. QUINCY said it would be in some degree to insult the people, to submit to them a proposition of this kind. It would be impracticable for them to examine and discuss intelligently such a number of propositions, and it would be left to accident whether many of them would be accepted or rejected. All I contend is, make the propositions distinct and so few that the people may understand them.

Mr. LINCOLN expressed his entire concurrence in the proposition offered by the committee. He answered the objections of the gentleman from Boston. He thought that the proposition was entirely practicable. The amendments might be submitted to the people in so distinct a form that there could be no difficulty in acting upon them. The objection seemed to presuppose a great degree of indifference, or want of intelligence on the part of the people. He argued that if several propositions were submitted together, all who

objected to any one of them, although they approved of all the rest, would vote against the whole, and that, although there might not be a majority of opinions against any amendment singly, they might all be rejected, because it would be impossible to vote against one without voting against all.

Mr. HOLMES, in reply to the objection to submitting the amendments in distinct parts, that the people would not be able to understand them, said if they could not act intelligently upon the parts, they could not act with intelligence upon the whole. He gave his reasons for approving of the resolution.

Mr. BLAKE thought there was an intrinsic difficulty in the subject. But he thought that before gentlemen objected to the mode proposed by the committee, they ought to be required to furnish a substitute. If all the amendments were stated to the people to be accepted or rejected together, and the people should reject the whole, we should be left in a deplorable state. The same objection would exist to submitting the amended constitution in a new draft. There was a like objection to the proposition of the Rev. gentleman from Boston.

Mr. ENOCH MUDGE of Lynn, inquired if the amendments should be sent out in this way to the people for adoption, whether they would hereafter be printed and used in the form of an appendix to the constitution, or whether they could be incorporated into the body of it so that any one who should wish to read it hereafter would be able to read it without reading, at the same time, the rejected parts of the constitution.

The PRESIDENT explained. The adoption of these resolutions would not preclude any proposition for effecting the object which the gentleman from Lynn had in view.

Mr. FLINT thought the greatest difficulty would arise in the town of Boston. If, when submitted for adoption, there should be one hundred gentlemen who wished to debate it, he was aware it would take a great deal of time. But he wished they should do it at their own expense, and that the Convention should not consume time, to avoid this difficulty. In other towns there would be no difficulty. If they should reject all the amendments but that which related to the senate, he should be glad. We should still have a constitution and be on safe ground.

Mr. WILLIAMS was satisfied with the report, but asked whether it would not preclude the drafting the constitution in the amended form. If it could be done by a committee, or in any other way, he should be better satisfied. He thought it important that the constitution as amended should be in a form in which it could be read and understood without reading the old constitution.

Mr. PARKER of Charlestown thought we were not ready to act on this proposition. How could we determine in what manner the amendments should be submitted, before it was determined what the amendments were. He thought it would be impracticable to submit them in this mode, if half the amendments which had been

proposed were adopted. The House had been taken by surprise—the printed report had not been in the hands of members.

Mr. **SALTONSTALL** said, that the embarrassment this morning did not arise from the difference of opinion between two gentlemen, as had been intimated in the course of the debate, but from the intrinsic difficulties in the report. There could be no difficulty, on the part of the people, acting upon the amendments submitted, in the manner now proposed. If they cannot understand the parts, they cannot the whole. The amendments are not to be voted down, but to be discussed; and if discussed, it can be much better done, by taking plain propositions in the form in which they may be submitted to them, than by taking the whole constitution, and proceeding in it, by sections.

The question was then taken upon the motion to postpone the resolutions, and decided in the negative, 111 to 250.

The question was then taken on the acceptance of the fourth resolution, and decided in the affirmative.

The other resolutions, on motion of Mr. **WEBSTER**, were laid on the table.

Mr. **STARKWEATHER** moved that when the Convention adjourned, it should adjourn to 3 o'clock in the afternoon.

This motion was afterwards withdrawn by the mover.

Mr. **BLISS** renewed the motion for afternoon sessions, after Monday next. After some debate the question was decided in the negative, 92 to 234.

Leave of absence was granted to Messrs. **AREY** of Wellfleet, **AUSTIN** of Charlestown, **BARTLETT** of Plymouth, and **HAMILTON** of Palmer.

Leave was refused to Mr. **WESTON** of Middleborough, and also to four other gentlemen, who applied on account of professional business, in the courts in Worcester county.

The House then adjourned.

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#### SATURDAY, DECEMBER 9.

The House was called to order at twenty minutes past 9 o'clock, and the journal of yesterday was read.

Mr. **PRINCE** of Boston moved to take up the report of the committee of the whole on the subject of the council.

Mr. **QUINCY** of Boston said, that according to the understanding of a former day, all the reports of the committee of the whole were to lie on the table until all the reports of the select committees were acted upon in committee of the whole. Otherwise he should be under the necessity of making a motion sooner than he intended to have done. He wished to get to the subject of the senate as soon as possible, and the motion he alluded to would be that the senate shall consist of thirty-one members, and that the counsellors shall be taken from the Commonwealth at large.



Mr. PRINCE withdrew his motion.

Mr. RICHARDSON of Hingham proposed that the report of the standing committee on the declaration of rights should be taken up.

A question was asked whether it had not been assigned for Monday.

Mr. BLISS, the chairman of the committee, said it had been assigned for Friday, but it was understood, that it should not come on till Monday, the reports on the judiciary and on the senate, &c., both having the precedence.

The PRESIDENT said he did not see the chairman of the committee on the judiciary (Mr. STORY) in his place, otherwise it might be proper to move to take up the report of that committee.

Mr. VARNUM of Dracut said he should wish, if gentlemen could not stay here, that the Convention should adjourn in order that other gentlemen might go home and visit their families.

(A few minutes afterwards Mr. STORY came into the house.)

On motion of Mr. PRESCOTT the Convention went into committee of the whole on the report of the select committee on that part of the constitution which relates to the senate and house of representatives, Mr. VARNUM in the chair.

The report was read, and the first resolution taken into consideration, viz. :

*Resolved*, That it is proper and expedient so far to alter and amend the constitution, as to provide, that there shall be annually elected, by the freeholders, and other inhabitants of the Commonwealth, thirty-six persons to be senators for the year ensuing their election.

Mr. PRESCOTT said that though the first resolution only was under consideration, it might not be improper to state generally the views of the select committee on the whole subject. This part of the constitution was referred to a numerous committee from different parts of the Commonwealth who had had it under consideration for a long time, and if the result was not such as all would approve, it was not because there had been any want of attention in the committee. They felt the importance of the subject and entered upon it fully impressed with its difficulties. The subject first taken into consideration was the senate. They had agreed to fix the number of members at thirty-six. This was not quite so large a number as was fixed by the present constitution—but from the forty, nine counsellors were to be selected, of whom it might be expected some would decline, though not all, as has been the practice of late years. The committee thought thirty-six was a sufficient number to do the business. It was rather small compared with the number of the house of representatives, but was larger than formerly, when, if the counsellors accepted their appointment, they were reduced to thirty-one. Some members of the committee preferred that the number should be larger, that it might be a more complete balance to so large a number in the other branch. The next question was, on what basis it should be apportioned. Should it be on property, as at present—or on population? There was much difference of

opinion. Some were in favor of forming as many districts, of equal population, as there should be senators, and that the same should be districts for the choice of representatives. But a large majority of the committee were opposed to this scheme, as not affording that check of one branch upon another which might be expected, where the districts for the two were differently constituted. Others were in favor of districts similar to those which now exist, and of apportioning the senators among them according to population. A large majority were also opposed to this plan. They considered that the design of government was the protection of property as well as of personal rights—that there should be a representation of property as well as of persons. This must be done, either by giving the power of voting only to persons possessed of property, a practice which had not prevailed in this Commonwealth, or by giving a greater representation to the parts of the state where there was the greatest accumulation of property. The last mode was preferred. In this manner, a security is provided for rights of both descriptions; of rights of the person in the most numerous branch, and of property in the other. But a more important view of the subject was, that the senate, constituted in this manner, formed a more effectual check upon the house of representatives. If there were two bodies elected by the same persons, in the same districts, and in the same proportions, although they sat in different chambers, they would not act in an equal degree as a check upon each other. Another argument in favor of this mode was derived from the principle that representation should be in some degree proportioned to taxation. Taxes are assessed upon the different parts of the Commonwealth in proportion to the valuation of their property, and if one portion of the Commonwealth should wish to avoid its due share of taxation, by an unjust valuation, it would be restrained in some degree by the consideration that it would suffer a proportionate diminution of power. It was thought too that no alteration should be made where no inconvenience had been felt. We had lived forty years under the constitution, and it was not known that any inconvenience had been experienced from this principle. On the other hand it was recollected that positive advantages had been derived from the particular organization of this branch of the Legislature. It would be recollected, that the constitution contained a provision, that there should not be more than six senators from any one district, and that there should not be less than ten districts. This limitation might be thought to trench upon the principle which was adopted as the basis. Some districts would be now entitled to seven senators and perhaps to more, but in the smaller districts there would be large fractions for which there should be some compensation. It seemed proper also to provide that no one district should be so large as to have a very great proportion of power, whatever might be its amount of property. The propositions must be considered as connected together, and forming a system. Some of them might be approved when considered as a part of the system, which would

not, if taken alone. It will be found that the large towns, which are benefited by the representation of property, in the senate, are reduced in the number of their representatives. This was an additional reason for retaining the old principle in regard to the senate. It was thought that the representatives being reduced, they should be paid out of the public treasury. This would weigh heavily on the large towns. Boston, for instance, which would have but fourteen or fifteen, would pay for forty or fifty. This was deemed some compensation to the small towns, which would be thus enabled to be represented during the whole session. He proceeded to remark on that part of the report which relates to the house of representatives. There was but one opinion in the committee on the expediency of reducing the number of members, but on what was the most beneficial mode, there were various opinions. The present number was more than five hundred, and there was nothing to prevent the augmentation of the number by the increase of population, and the division of towns. It was considered that a house of five hundred was much too large a body to be able to legislate to advantage—they could not compare and communicate opinions, so as to act with the united wisdom of the whole—they felt little responsibility, and when the members were constantly changing, as was commonly the case, they could feel hardly any. Those who begin business, leave before it is finished. The whole quorum might be changed four or five times in the same session. Business therefore was not done with the same care and attention that it would be where the same members continued through the session, and kept their eye on the business from the beginning to the end. Great opportunity was afforded for carrying particular projects. It was only necessary to seek a favorable moment for bringing forward a favorite measure, and it might be carried in opposition to the sense of a great majority of the whole house. The number was more than double the most numerous legislative body in any of the states. But there was no mode of reducing it which was not attended with great difficulty. There were various opinions with respect to the most expedient mode. Several were proposed and discussed in the committee. One was, that the State should be divided into as many equal districts as there were senators; and that each district should choose a certain number of representatives. This was not agreeable to the views of a majority of the committee.

Another mode was, to form convenient districts of from 6 to 15,000 inhabitants, preserving town and county lines, and to give each district a number of representatives proportioned to its population. But the majority of the committee, considering the attachment of the towns to their corporate privileges, determined to adhere to the old usage of choosing by towns. But there were 298 towns now entitled to elect a representative; and if each town were allowed still to choose one, and the large towns were deprived of their right to a proportionate weight in the representation, there

would be still a very large house. It was evident, therefore, if any reasonable and valuable change was to be made, the limit of population to entitle a town to be permanently represented, must be increased. It was thought more convenient to assume the actual population, as taken by the census once in ten years, as the basis of apportionment, than to place it upon the number of polls as heretofore. It was agreed that whatever number was assumed to entitle a town to one member, double that number should be required, as the standing ratio to authorize each additional member. On this principle the parts of the State divided into small towns would be fully compensated, for the unrepresented portions, which are likely to occur in every town; and every county would have nearly an exact proportion of representatives compared with their population. But after making this full allowance, it was thought there was no reason for adopting any other ratio for the additional members. There was some difference of opinion respecting the most suitable number to which the house should be reduced. Some of the committee thought it should be as low as from 120 to 150; others 200 to 250. A majority of the committee thought it would be best to assume a basis that would give from 260 to 300 members. Various numbers were proposed as the limit of population that should entitle a town to a representative; but 1200 was fully agreed on, it being computed that this number would give, as the population now is, a representation of about 260 members. It was computed that there were 147 or 148 towns now entitled to a representative, whose population was below 1200. What provision should be made for these towns? No one thought that they should be deprived of the same proportion of representation as they now have. Various modes were proposed. It was found that their average population was about 800. One proposition was to put two towns together, and to allow them to choose jointly, either at large, or from each alternately. There were objections to this: there would be jealousies; the larger town would control the smaller. It was thought that it would be more acceptable, to divide them into two classes, putting the larger into one class, and the smaller into the other, and to give each a right to choose alternately. If there was an odd number in any county, one should choose every other year. In this manner every small town would have its due proportion of representation, and taking them together, they would have a considerable advantage. The average number of representatives in all the large towns, is only one for every 2400 inhabitants. But all the towns under 1200, as well as those between 1200 and 2400, have a considerable advantage. The 148 towns which have under 1200 inhabitants, will be entitled permanently to 74 representatives, which is an average of one for every 1632 inhabitants. If their population was all in one town it would give but 51 members. There are 106 of a population between 1200 and 2400, which will be entitled to one representative each, making an average of one representative for every 1646 inhabitants. The population of these

106 towns, if together in one town, would give them, on the principle applicable to the large towns, but 70 representatives; and the population of the 253, which will now, on the principle assumed, have 180 representatives, would, if the whole were in one town, be entitled to but 121. The small towns, therefore, of under 1200 inhabitants, as well as those between 1200 and 2400, will, on an average, have a representative for about two thirds of the population which will be the average number required to give one in the large town; so that instead of losing any share of their influence by the proposed mode of representation, they gain one third. When any of the small towns which are now to be classed, shall rise above 1200 inhabitants, they are to have the privilege of a permanent representative. But this privilege is not to be given to a new town, which is formed by a voluntary division of a town now existing, until it shall rise to 2400 inhabitants. This scheme would reduce the house of representatives to about one half the present number. The committee were induced to agree that the members should be paid out of the treasury of the Commonwealth. They were aware of the inequality of this mode of compensation; but they considered that the expense would be reduced; that the business would be transacted better; that where they are paid by the towns, the expense to the small towns is heavy, and they attend so short a period of time as hardly to be of advantage to the towns or to the Commonwealth. They thought, therefore, that it would be for the public benefit that they should be paid from the public treasury, as there was no other mode of inducing them to remain through the session. This, however, was on condition that the number should be reduced in the manner proposed, and with some that the senate should continue to be apportioned as it now is. It was proposed that the quorum in both houses should be altered to correspond with the change in their organization. As there would be no excuse for non-attendance in the house of representatives, there could be no objection to increasing the quorum from sixty to an hundred. He stated as an additional reason for classing the small towns instead of forming them into districts, that some new tribunal would be necessary, different from any now organized, to which the votes should be returned for examination.

Mr. DEARBORN thought gentlemen had not expected that this report would be taken up at this time, and that they were not prepared to act upon it. He therefore hoped it might be assigned to a future day, and moved that the committee should rise and report progress.

The question was taken on the motion, and decided in the negative—117 to 195.

Mr. PICKMAN rose, not to enter into a discussion of the resolution, but to express a wish that no question might be taken to-day on the resolution in the thin state of the House. In the mean time it might be debated and the views of the gentlemen upon it might be ascertained; but it would be improper to come to a decision on so

important a subject, without previous notice, and when so many members were absent. Mr. Parker thought there would be no objection to proceeding in the discussion, as it was not probable that the committee would be ready to take the question on the resolution in the course of the day.

Mr. KEYES of Concord moved to amend the resolution by inserting after "Commonwealth," the words "of twenty one years of age, paupers excepted," and by striking out "thirty-six," and inserting "thirty-one." His object, he said, was to take away the qualification now required, that the electors of senators should be possessed of two hundred dollars. He thought that provision was pregnant with much evil; that it had often been the cause of moral perjury. As to the number of senators, it was believed that thirty-six were more than were necessary; that thirty-one was the original number expected to be in the senate, as it was not supposed that those selected for counsellors would decline the office; and that since Maine was separated, thirty-one would be enough.

Mr. FREEMAN of Boston rose to speak only to that part of the motion which proposed to change the number of senators from 36 to 31. He was in favor of retaining 36 on account of the peculiar properties of that number. It was susceptible of a more perfect division than almost any other number. It was divisible by 2, 3, 4, 6, &c. It was equal to the sum of an arithmetical series of numbers, 1, 2, 3, &c., to 8. He stated other peculiar properties of this number. But 31 was a prime number, divisible by nothing. The peculiar advantages of the number proposed would be apparent in the facility of apportioning the senators among the several districts according to property, if that was assumed as the whole number of the senate. The number of senators assigned to the several districts in proportion to their respective amounts of tax, would be, according to the following statement, apportioned on 1000 dollars :

| <i>Lowest sum.</i> | <i>Mean sum.</i> | <i>No. of senators,</i> |
|--------------------|------------------|-------------------------|
| 25 . . . . .       | 37.50 . . . . .  | for 1                   |
| 50 . . . . .       | 62.50 . . . . .  | 2                       |
| 75 . . . . .       | 87.50 . . . . .  | 3                       |
| 100 . . . . .      | 112.50 . . . . . | 4                       |
| 125 . . . . .      | 137.50 . . . . . | 5                       |
| 150 . . . . .      | 162.50 . . . . . | 6                       |
| 175 . . . . .      | 187.50 . . . . . | 7                       |
| 200 . . . . .      | 212.50 . . . . . | 8                       |

He added that 36 was the number originally intended to represent Massachusetts; the other 4 being intended to represent the District of Maine.

Mr. Savage of Boston wished that there might be a division of the question; or he hoped the gentleman from Concord would see the advantage of acting upon each part of his amendment by itself, and would withdraw his motion for the purpose of introducing two separate propositions, one relating to the number of the senators, the other to the qualification of the electors.

Mr. KEYES said he had no objection.

The CHAIRMAN said it was well enough at present, as the question was capable of division, both parts making sense. The chairman then stated the question to be on the first part, respecting the qualifications of electors.

Mr. BEACH of Gloucester moved to insert in the amendment after "paupers" the words "and those under guardianship."

Mr. BOND of Boston inquired of the chairman whether the question was divisible, being to strike out and insert.

Mr. PRESCOTT said the object of the committee was to present, in the first resolution, the single question of the number of senators. They had not touched the subject of the qualification of voters. If the gentleman wished to raise that question he thought it would be better for him to present it in an independent resolution, and not in the form of an amendment of this, which does not involve the subject.

The CHAIRMAN, in reply to the suggestion that the resolution was not divisible, said that the first clause of the amendment, which related to the qualification of voters, should be put so as not to include the striking out. The amendment would in that way be susceptible of division.

Mr. MORTON of Dorchester was apprehensive that the committee would again fall into the embarrassment they had so often experienced, from having too many propositions blended together. The resolution itself was a simple proposition; the amendment contained two. The part relating to the qualification of electors had nothing to do with the subject of the resolution, and was out of order; the other part, respecting the number of senators, was in order.

Mr. KEYES then offered, as a substitute for the resolution before the committee, two resolutions embracing the two parts of his amendment; having first withdrawn his amendment.

Mr. MORTON said the resolution respecting the qualification ought to be first offered in convention, and there referred to a committee of the whole.

The CHAIRMAN said that as it related to a new subject, not touched in the report of the standing committee, it was out of order, and that the other resolution was in order.

Mr. KEYES varied his proposition, and moved to strike out "six," and insert "one," so as to have the number of senators thirty-one.

Mr. CHILDS thought that the principle of apportionment should be first settled. If that were settled upon the basis of property, according to the views of the select committee, he should be ready to proceed in settling the number of senators. He thought the present representation did not give a fair representation of property. The principle of representation was an important question, and it ought to be first settled. The House had not expected to meet it to day, and were not prepared for it. He therefore moved that the committee rise.

The motion was negatived.

Mr. FOSTER of Littleton said he was not prepared to act on this

subject, as it was not yet determined in what manner the counselors were to be chosen. They would probably be elected by a general ticket from the people at large, or by the Legislature, out of the senate. In the latter case thirty-one would be too small a number for the senate.

Mr. QUINCY rose on a point of order. It was a very natural difficulty with the gentleman from Pittsfield how to bring forward his proposition. But if gentlemen would analyze a little, all difficulty would be removed. A single subject was now before the committee. All that a gentleman has to do, is to offer a resolution in convention, and have it referred to such committee of the whole as he pleases; and then, when the house is in that committee, he can move to consider first his proposition. This is the parliamentary and most expeditious course. It was very true, as the gentleman from Littleton had observed, that there was a connection between the present subject and that of the council; and the gentleman might move in convention, to have the subject of the council referred to this committee.

Mr. FLINT moved to pass over the first resolution, and take up the next. He thought the propriety of adopting this depended upon the decision which should be made upon the other proposition.

Mr. BOND thought that the difficulty which presented itself in this resolution would occur again in the next, or at least in the third, and that nothing would be gained by passing to the consideration of the others. It appeared to be necessary that the question mentioned by the gentleman from Pittsfield, What should be the principle of apportionment, should be settled before the committee could proceed profitably in the discussion of the remaining propositions. To come to this question it would be necessary that the committee should rise, that a proposition might be made and brought before the House. He therefore moved that the committee rise.

Mr. AUSTIN of Boston inquired whether the motion was in order, as the committee had made no progress since the last motion to rise.

The CHAIRMAN replied that it was.

The motion to rise was then put and decided in the affirmative—192 to 62.

The committee reported progress, and asked leave to sit again; which was granted.

Mr. BLAKE of Boston moved that a committee be appointed to review the journal, and report what order should be pursued in taking up business.

Mr. LELAND of Roxbury opposed the motion; he could see no advantage to be derived from it.

Mr. BLAKE said he could only say that such a committee had sometimes been appointed in Congress, and had been found useful; an ounce of experience was better than a ton of speculation.

Mr. MATTOON of Amherst opposed the motion, and inquired whether the report of the committee on the declaration of rights was the



order of the day for Monday. If so, he should move to adjourn. They had done nothing yet.

The PRESIDENT said the unfinished business of this day would be the order of the day for Monday, and would probably take up one or two days. Next in order would be the report on the judiciary, and then the report on the declaration of rights.

Mr. QUINCY said the rules of the Convention required that the unfinished business of one day should be the order of the day for the next. That the subject, which they had been discussing in committee, was the most important of any on which they should be called to act, and he hoped it would come on again on Monday. But if gentlemen should not wish to take it up on that day, the course would be to move that it lie on the table. Gentlemen had said we had done nothing to day. He thought they had done a great deal. They had got into the heart of the subject of most importance; and particularly, was it doing a great deal, to have heard the able elucidation, which was made by the chairman of the committee on that subject.

Mr. BLAKE withdrew his motion.

Mr. WEBSTER said there was an inconvenience which arose from the numbers in the resolutions reported by the select committee being filled, instead of being reported in blank. In the resolution which had been before the committee of the whole this morning, the question could not be taken on the number thirty-six—it could only be taken on accepting the resolutions, and when accepted it could not be amended. If thirty-six were struck out for the purpose of inserting another number, it could not be again inserted. This had presented an obstacle this morning. But the object of the gentleman from Pittsfield might have been effected by moving to amend the resolution by adding the words, "to be chosen in districts, in proportion to their respective population."

Mr. QUINCY, professing great deference to the gentleman's talents and high respect for his opinions generally on questions of order, was obliged in this case to differ from him. He said the committee ought to confine themselves to the business specifically committed to them—that new subjects ought not to be introduced in committee, but should be proposed in convention and there referred to the committee.

Mr. MORTON said he had moved for the committee to rise, in order that gentlemen might make their motions in Convention, and have them referred.

Mr. ENOCH MUDGE of Lynn moved for a reconsideration of the vote passed yesterday, adopting the fourth resolution reported by the committee on the mode of submitting amendments of the constitution to the people. He said he was not dissatisfied with it himself, but some others were, and one gentleman had intended to vote with the majority, for the purpose of moving a reconsideration, but not understanding the question, when it was put, had voted the wrong way.

Mr. LELAND inquired if the resolution had had two readings.

The PRESIDENT said it was not necessary, as it did not propose any alteration of the constitution.

Mr. BOND wished the gentleman, who made the motion, would give some reasons for reconsidering.

The PRESIDENT repeated what the gentleman had stated on making the motion.

Mr. CHILDS said he was not much dissatisfied with the resolution, and did not know that he should not like it, when he knew what amendments were to be proposed to the people. It depended on this circumstance; and if the vote should be reconsidered, he should only want the question on the resolution to be postponed.

Mr. MORTON opposed the reconsideration. He said, if this resolution had been adopted in the beginning, it would have saved the Commonwealth ten thousand dollars. He said it would not preclude any amendments to the constitution.

Mr. FAX of Cambridge was as much in favor of taking a decisive step on this subject, as the gentleman last up; but he was not satisfied, that the mode proposed in the resolution, for submitting the amendments, was the best. There was another mode, which he thought preferable. The intention of the committee was to give the people a fair chance—to let them adopt such amendments as they approved, and reject such as they disliked. He thought the people would be better satisfied with a new draft. They would not want to discuss every amendment—they sent us here to do their work; and for himself, as one of the people, he should prefer taking his chance, in voting upon all the constitution together, in the same manner as the constitution of 1780 was adopted.

Mr. BLISS said the gentleman was in an error; the separate parts were acted upon by the people, and there were an hundred exceptions, by different towns, to different parts. He had examined the records in the secretary's office.

Mr. FAX said it might be so; he had inferred that the whole of it was taken up together by the people, from its having the appearance of being one work. He said the people were not so capable in their town meetings of forming a constitution as the Convention, or of seeing the connection of the different parts; and if they should adopt some, and reject others, the intention of the Convention might be frustrated. He observed, that of the amendments appended to the constitution of the United States, some were accepted and others not. This mode of submitting them tended to produce confusion, and it would require a lawyer to tell what was, and what was not, a part of the constitution. The Convention was not a court of errors to correct anything which might become amiss in consequence of the people voting on the amendments separately; the whole must be done now. There was no necessity for the people adopting them in detail; they would thus lose the benefit of the wisdom of the Convention. It would have been as well to have saved the expense of a Convention, and have said that all the propositions for

amendments, which have appeared in the Boston newspapers for the last six months, should be submitted to the people, and those which a majority should adopt, should make a part of the constitution. He thought these reasons overbalanced the reasons on the side of the report. He added, that the mode of numbering the amendments would be likely to cause mistakes. He wished the motion for reconsideration might prevail.

Mr. FOSTER thought it unfair to move for a reconsideration on Saturday, when the numbers were so much thinned. It looked like an attempt to smuggle a proposition through the House. He should therefore repeat the motion for an adjournment.

Mr. VARNUM wished the gentleman to withdraw his motion, in order that he might move to postpone the subject of reconsideration until Tuesday.

Mr. FOSTER gave way.

The question was taken to postpone and decided in the affirmative—209 to 53.

Mr. KEYES offered the following resolution :

*Resolved*, That it is expedient so to amend the constitution, as to provide that no pecuniary qualification shall be required for electors of any officers under this government.

Ordered to be referred to the committee of the whole on the senate, &c.—220 to 18.

Mr. CHILDS gave notice that on Monday he should introduce a resolution for apportioning the senate on the basis of population.

Mr. NICHOLS offered the following resolution :

*Resolved*, That it is expedient so to amend the constitution, as to provide that no pecuniary qualification shall be required, to enable persons to hold the offices of senator or representative.

Ordered to be referred to the committee of the whole on the senate, &c.—148 to 90.

Mr. WELLS of Boston offered as an amendment to the report of the select committee on the senate, &c., a resolution proposing that counsellors and senators shall be chosen as they now are, and that the persons designated to serve as counsellors shall be holden to serve as such, unless they shall give a sufficient reason for declining, in which case the Legislature shall proceed to supply the vacancies occasioned by their resignation.

Mr. WEBSTER said this amendment could not be received, as that report was before the committee of the whole.

Mr. WELLS said if he was not in order, he would withdraw the motion, for the purpose of renewing it at a proper time.

It was then moved, that when the House adjourned, it should adjourn to Monday at 11 o'clock—negatived—82 to 199.

It was then voted to adjourn to Monday at 10 o'clock.

The House adjourned.

MONDAY, DECEMBER 11.

The House met at 10 o'clock. The journal of Saturday was read.

Mr. WEBSTER of Boston moved that the report of the select committee on the declaration of rights be recommitted to the same committee, with instructions to present the matter of the several resolutions recommended by them in a new form ; so as to state the substance and effect of the several alterations to the constitution therein proposed.

The above motion was adopted, the committee of the whole, to which that report had been referred, having been first discharged from the consideration of the same.

Mr. LELAND of Roxbury offered three resolutions, in substance as follows, viz. : that it is expedient so to alter the constitution, as to provide, 1st. That persons be elected by the inhabitants of this Commonwealth qualified to vote, to be counsellors and senators. 2d. That the electors shall designate—of the number to be counsellors. 3d. That the persons so designated, shall serve as counsellors, (ceasing to be senators) and the rest shall constitute the senate.

Mr. LELAND moved that the resolutions be referred to the committee of the whole upon the senate, &c. Negatived.

They were then referred to the committee of the whole upon the resolutions offered on a former day by Mr. DEARBORN, relating to the lieutenant governor, &c.

Mr. MORTON offered a resolution declaring that the constitution ought to be so amended as to provide that there shall be annually chosen by the freeholders and other inhabitants of each senatorial district one person residing in the district to be returned as counsellor, and that of the persons so returned, of more than seven, the two houses of the General Court by joint ballot shall elect seven to serve as counsellors. If there be not seven returned, the deficiency to be supplied by joint ballot from the two persons in each district who have the greatest number of votes. And if a vacancy shall occur, it shall be supplied by joint ballot of the two houses from the people at large.

The resolution was referred to a committee of the whole.

Mr. S. A. WELLS offered a resolution purporting that it is proper and expedient so to amend the constitution, that any person returned as counsellor and senator shall be holden to serve as counsellor, if chosen to that office by the two houses of the Legislature, in the manner prescribed in the constitution. He stated that his object in moving this resolution was to restore the spirit of the old constitution. He considered it a defect in the constitution, that the persons elected from the senate were permitted to decline the appointment to the council and to continue to hold their seats in the senate.

A motion to commit this resolution to a committee of the whole on the senate was negatived. It was then referred to the committee of the whole on Mr. DEARBORN's resolution.

Mr. LELAND of Roxbury moved that the report of the select committee on the subject of the council, agreed to in committee of the

whole, should be recommitted to the committee of the whole, on Mr. DEARBORN's resolutions. Agreed to.

*Senate and House of Representatives.*—The Convention then went into committee of the whole on the unfinished business of Saturday, Mr. WEBSTER in the chair.

The first resolution, purporting that it is expedient so to alter the constitution that the senate shall consist of thirty-six persons, was stated to be under consideration.

Mr. DANA had no desire to see the senate reduced from forty, the present number. He considered the principle of a balance between the two houses, an important one, and it was a principle that had been sanctioned with great unanimity by the Convention. The present number he thought was not larger than would be necessary to secure a proper balance against so numerous a house of representatives. He should, therefore, prefer retaining that number. But he presumed the committee had fully considered the subject, and he would not propose any amendment of the resolution. He should, however, be decidedly opposed to any further reduction.

Mr. BLAKE of Boston said a mistake had too long prevailed in relation to the senate. It never was contemplated by the framers of the constitution, to have more than thirty-one senators. But by an abuse, (he did not mean moral turpitude) the senate had been enlarged, and the mode of choosing counsellors altered. That thirty-one was the number originally intended for the senate, was evident from the quorum being fixed at sixteen. He said, that in no assembly of the kind, consisting of about the same number, in any of the United States, was the quorum fixed at less than a majority of the whole number. He was however entirely satisfied with the number, thirty-six, to which it was proposed to enlarge the senate, as being a convenient number, and capable of a great many divisions; as had been mentioned before, by his Rev. colleague, (Mr. FREEMAN.)

Mr. SLOCUM of Dartmouth said he had been waiting with patience, expecting to be enlightened by the discussion, but the more he heard from the gentleman who used to subscribe to his opinions the more he was embarrassed, and he was compelled to differ from the high gentleman with whom he used to side. He thought the number thirty-six, larger than was necessary for the senate. The senate of the United States consisted originally of, but twenty-six, that of New Hampshire consists of twelve, and that of Rhode Island of ten. He presumed these numbers were adequate for the object designed. Gentlemen seemed to think that we wanted as many now, as we did before the separation of Maine. It had been said that the expense of having thirty-six was but little; but these littles made a considerable sum for their constituents to pay. The gentleman from Groton wanted a larger number than thirty-six, in order to balance the number in the house of representatives; but the majority of the senate would always be a check, whether the whole number were large or small. He thought thir-

ty-six was a supernumerary number—they were sent there to make a constitution congenial to the genius of the people—they must consult economy. He should vote for thirty-one.

Mr. LELAND could see no objection to the number, provided the senators were to be chosen distinct from the counsellors. But if the council were to be elected from the persons returned as senators, he thought the number was too small. He was in favor of choosing the council and senate together, and for that reason opposed to the number stated in the resolution. But with a view that the question respecting the mode of choosing the council might be first settled, he moved that the committee should pass to the second resolution.

Mr. PRESCOTT said that if the committee were to pass from one resolution to another at the call of any member, nothing would ever be settled. The report was predicated upon the supposition that the senate and council should be chosen independently of each other. If this resolution should now be adopted, and it should be afterwards determined to choose the council from the senate, the decision now made might be reconsidered and the number increased.

The motion to pass over the first resolution was negatived.

The question on acceptance of the resolution, was decided in the affirmative, 195 to 113.

The second resolution was then read and agreed to.

The third resolution having been read,

Mr. DANA wished to hear from the chairman of the committee an exposition of their reasons for proposing it.

Mr. PRESCOTT said that the resolution had been agreed to almost unanimously, by the select committee. It did not forbid the division of counties into new counties, but merely the division of them in forming senatorial districts. It was thought important that it should not be left in the power of the Legislature to make a division for a temporary purpose. They saw no inconvenience in the restriction, but on looking back they perceived that great inconvenience had been felt from the power of division.

Mr. DEARBORN moved that the third resolution should be passed over, with a view that the gentleman from Pittsfield might have an opportunity to bring forward his motion offered on Saturday, for apportioning the senate according to population.

Mr. LAWRENCE was for passing over the resolution. One reason for proposing the limitation in the resolution was founded on the restriction provided in another resolution, that no district should have more than six senators. This restriction ought to take place whether the senators were apportioned on population or on property.

The motion was negatived.

Mr. SIBLEY of Sutton opposed the resolution. Some of the smaller counties might hereafter be disposed to unite, and it might likewise be desirable to divide some of the larger counties. The county from which he came, (Worcester) he thought, would like

to be divided. It would therefore be inconvenient to limit the number of districts to ten.

The question was then taken on the third resolution and decided in the affirmative—193 to 132.

The fourth resolution was passed over on the suggestion of Mr. VARNUM, in order to give an opportunity to Mr. CHILDS, (who was prevented by illness from attending) to make the motion of which he gave notice on Saturday.

The fifth, sixth and seventh resolutions were adopted without a division.

The eighth being the first of those relating to the representatives having been read,

Mr. LONGLEY of Bolton offered a proposition as a substitute for the resolutions from the eighth to the fourteenth inclusive, that 250 rateable polls should entitle a town to one representative, 625 to two, and so on, making 375 rateable polls the mean increasing ratio—that all the towns now incorporated, although having less than 250 rateable polls, should nevertheless have one representative each, but any town hereafter incorporated should have 150 rateable polls to entitle it to one representative—that towns having less than 250 rateable polls should be exempt from a fine, unless they neglected for more than two years in succession to send a representative—and that the representatives should be paid by the towns, unless otherwise provided by law. Mr. L. observed that the phraseology of his resolution, except in the numbers, was copied from the present constitution. He thought the ratio in the report was too high; between 20 and 30 towns in the county of Worcester would be deprived of a representation, except every other year—taking the census of 1810 for the guide. The number in the house would be kept down, by removing the fine from the small towns; which would probably not send a representative oftener than every other year. He could see no other way of saving the rights of the small towns.

Mr. FREEMAN of Boston rose to present some arithmetical calculations to show the principles on which the committee proceeded. In the principle assumed there were two or three important alterations of the principle of the present constitution. The report proposed a new ratio of representation by which the number was reduced—and that no town shall have more than one representative unless upon a population equal to the mean ratio. The ratio by the present constitution, was formed by taking 150, the number which gives one representative, and adding to it one half. The ratio proposed is obtained by taking the number which gives one representative and doubling it. To show that the last mode was just and the other not, he supposed three cases. 1st. That 150 rateable polls elect one—300 two—450 three &c.—making no allowance for the surplus numbers. Then the mean number for electing one in towns where only one is chosen will be 225, and in towns where two are chosen 187½—where three are chosen 175 &c. 2d. The

ratio of the present constitution—150 rateable polls elect one representative—375 two—600 three, &c. The mean number electing one representative, where only one is chosen, is 150 added to half the increasing number, viz., 262½. The mean number in towns electing two is 375 added to half the increasing number, making 487½, or 243 for each member. The mean number in towns electing three is 600 added to half the increasing number, making 712½, or 237½ for each member. The average number for electing each representative is therefore greatest in towns that elect but one and gradually diminishes as the number to which the town is entitled increases. 3d. The just ratio which is that assumed in the report—150 rateable polls elect one representative—450 two—750 three, &c.—the increasing number being 300, and the mean surplus 150. Then the mean number electing one, where only one is chosen, is equal to 150 added to half the increasing number, making 300. The mean number electing two will be equal to 450 added to half the increasing number, making 600, or 300 for each. The mean number in towns electing three will be 750 added to half the increasing number, making 900, or 300 for each representative—and whatever number are chosen from any one town, the average number of rateable polls electing each will be the same. These principles he illustrated in a variety of ways. The last principle the select committee had adopted, and, as it was mathematically accurate, he presumed it would be adopted by the Convention. It was applicable to any assumed number. The committee had assumed 1200 inhabitants. It was, however, deviated from in reference to the small towns, from necessity, and a different provision was made for them. He mentioned several schemes which had been offered in the committee for districting the State for the choice of representatives, which had been rejected by them. He stated further, that if the present number of rateable polls for giving one representative were retained, and the correct increasing ratio applied, it would reduce the house from 512 members to 414.

Mr. MARTIN of Marblehead said that he did not like either proposition. He said that on examining the last census, for we were obliged to take the last census for our motto, he had found that if 1200 inhabitants were required to give a representative there would be 138 towns which would be deprived of a representation. He believed that this would be enough to set aside the whole doings of the Convention, if they were submitted to the people together. If he could have his own way about it, he would give every town that is now entitled to a representative, one. And the Convention might require five hundred or a thousand or any other number of rateable polls to entitle any town to another, if they were a mind to.

Mr. PRESCOTT said that the mode proposed by the gentleman from Bolton, would give a very numerous house. Every town would have one, and this would give two hundred and ninety-eight members. The additional number for the larger towns would make



more than four hundred. If the proposition of the committee should be adopted, the small towns would have the least reason to complain. They would have much the largest proportion of representation. The towns entitled to send a representative every other year will have a representation equivalent on an average to one member every year, for 1633 inhabitants. The whole population of the towns of less than 1200 inhabitants, is about 121,000. These towns will be now represented every year by 74 members, but their population on the principle applicable to large towns would give but 51 members. There are 18 towns which have over 3600 inhabitants each, 118,000 in all. These 18 towns will have but 55 representatives. There are 106 towns of a population between 1200 and 2400. These have 106 representatives, but their whole population, if all in one town, or distributed in several large towns, would give but 70 representatives. The whole computation goes on a principle that diminishes the proportion of influence of the large towns, and gives a large increase to that of the small towns. It is indispensable, unless we would have a house of 400 members at least, either to class the small towns, or to district them.

Mr. LAWRENCE said the amendment proposed that polls should be adopted as the basis of representation instead of population. He presumed this basis never would have been adopted, if there had been at the time of the framing of the constitution any provision for the periodical enumeration of the inhabitants. Polls did not before that time form the basis of representation. By the laws of 1692 and 1776, the number of freeholders was the basis. There was at the time of the formation of the constitution no mode of ascertaining the number of inhabitants; but there was of rateable polls. It would be found that from particular causes, the number of rateable polls was not proportioned to the number of inhabitants. In the county of Suffolk, for instance, there were two thousand more rateable polls than in Berkshire, though in the latter county the population was greatest. The Legislature also may alter the number of rateable polls, but cannot the number of inhabitants. They may provide by law for taxing all polls over 10 years of age, or that only those over 21 or 50, should be taxed. The determining the number of polls is left to the towns, and is liable to fraud.

The question on the amendment was taken and decided in the negative.

Mr. HORT of Deerfield proposed to amend the resolution by adding that in case the Legislature should hereafter divide or set off a part of a town having 1200 inhabitants and upwards so as to reduce it to less than 1200, it should notwithstanding retain its right to send a representative. Mr. H. said that setting off a part, might materially affect ancient towns who hold dear their privileges. Old towns were generally averse to a division, and he was aware that the tendency of this resolution was to prevent a division. He was desirous however of protecting the rights of ancient towns whenever a division should take place.

Mr. LOCKE of Billerica thought the object of the amendment was perfectly secured by the report as it stood. If a town which now has 1200 inhabitants, should be divided by the Legislature, it would still have a right to a representative. The 13th resolution would tend to prevent the cutting up of towns into small portions. Towns have sometimes, heretofore, been divided in a manner injurious to themselves, and which would now be glad to be reunited.

Mr. STARKWEATHER was in favor of the amendment, though he agreed with the gentleman from Billerica, that the right would not be taken away by a division within the ten years. After ten years, a town reduced by division below 1200, would not be protected in its right of having a permanent representative.

Mr. DRAPER of Spencer thought the amendment ought to be adopted, and that the provision should be extended to reductions from other causes.

Mr. DANA thought the proposition of the gentleman from Deerfield was founded in sound sense. There was a disposition in most persons to preserve large establishments, though in relation to towns and counties it was often found convenient to divide them. The operation of the resolution, if not amended, would increase the obstacles to divisions in cases where they would be convenient. The amendment would make the resolution more perfect.

Mr. HOTT said that one object which he had in view was, that the principle should be definitely settled, so that there should be no misunderstanding.

Mr. PRESCOTT said that the amendment would have such an effect that if part of a town of more 1200 inhabitants, were taken off and annexed to a town of less than that number, so as to raise it above 1200, both would acquire a right to be permanently represented. If it could be divested of this effect, there would be no objection to it.

Mr. D. DAVIS said the object of the mover was to put it out of the power of the Legislature, by the division of a town, to disfranchise it of its right of representation. He opposed the amendment, because it was unnecessary. If the amendment proposed by the resolution was adopted, every town of 1200 inhabitants would have a vested right to a representative. And if the Legislature should be so unwise as, by dividing it, to reduce it below 1200, it would not divest it of this right.

Mr. SULLIVAN of Boston differed from his colleague, who spoke last. He said, suppose that a town, by taking off a part, is reduced below 1200 inhabitants, it then falls into the classed towns, and the town which is increased to 1200 inhabitants, will gain a representative. The constitution will not give a vested right to any town, but its right to representation will change, according to the change in the number of its inhabitants.

Mr. STONE of Stow and Boxborough said there was a defect in the resolution, inasmuch as it made no provision for districts. There were only six towns which were now united for the choice

of representatives, and in these cases the larger towns control the smaller. He thought, therefore, that these towns should be put upon the footing of other small towns and allowed to choose alternately. But as the resolution now stands, there is no provision whatever for districts. He moved, therefore, to amend it by inserting the words "or districts," after the word "towns."

The motion was agreed to.

The question was then taken on the eighth resolution, and decided in the affirmative, 225 to 89. The ninth resolution was also agreed to.

The tenth resolution was amended by inserting "or districts," for conformity, and was agreed to. The eleventh resolution was agreed to. The twelfth, amended for conformity, was agreed to. The thirteenth was agreed to.

The fourteenth resolution was amended by substituting "shall" for "may," and agreed to. The fifteenth, sixteenth, and seventeenth, were also agreed to.

The resolution offered by Mr. KEYES, on Saturday, and referred to this committee, proposing to abolish all pecuniary qualification in electors of officers under this government, was taken up by the committee.

Mr. NICHOLS of South Reading moved that the committee should rise. Negatived.

Mr. PARKER of Charlestown moved to pass over the resolution, on account of the absence of the mover. Negatived.

The question was then taken on the resolution, and decided in the affirmative, 185 to 157.

Mr. ALVORD of Greenfield moved a reconsideration of the last vote.

Mr. FOSTER of Littleton said he was not present when the vote was taken, but he should have voted in the affirmative. He would not question the right to require such a qualification, but he had been for several years convinced that it was inexpedient and mischievous. Either a greater amount of property should be required, or none at all. Great difficulties were occasioned by this requisition at every election, and continual questions asked of this sort—what property have you? have you the tools of any trade? Yes. What else? A pair of steers my father gave me. And if this was not enough, then, he said, a note, which is never intended to be paid, makes up the balance. Men in this Commonwealth become freemen when they arrive at twenty-one years of age; and why oblige them to buy their freedom? They perform militia duty—they pay a tax for all they possess, that is, their polls. Nothing, he said, of so little consequence in itself, was so ardently desired, as an alteration in this part of the constitution. Men who have no property are put in the situation of the slaves of Virginia; they ought to be saved from the degrading feelings.

Mr. BOND of Boston said the reverend gentleman was mistaken on one point. The resolution did not confine the right of voting to those who paid a poll tax; but paupers also were embraced by it.

Mr. FOSTER said he did not mean to allow them the privilege of voting.

Mr. DUTTON said he was in favor of reconsideration. He had voted against the resolution, which, it is now understood by those who supported it, ought to be modified so as to exclude paupers. Although the resolution as it passed, was without limitation, still he was willing to consider it, as modified in the manner suggested. It introduced a new principle into the constitution. It was universal suffrage. There were two ways of considering it. 1st. As a matter of right. 2d. As a matter of expediency. As to the right, he inquired why paupers were excluded at all, if it was a common right; and if it was not, then there was the same right in the community to exclude every man, who was not worth two hundred dollars, as there was to exclude paupers, or persons under twenty-one years. In truth there was no question of right; it was wholly a question of expediency. He thought it expedient to retain the qualification in the constitution. It was in the nature of a privilege, and as such, it was connected with many virtues, which conduced to the good order of society. It was a distinction to be sought for; it was the reward of good conduct. It encouraged industry, economy and prudence; it elevated the standard of all our civil institutions, and gave dignity and importance to those who chose, and those who were chosen. It acted as a stimulus to exertion to acquire what it was a distinction to possess. He maintained that in this country, where the means of subsistence were so abundant, and the demand for labor so great, every man of sound body could acquire the necessary qualification. If he failed to do this, it must be, ordinarily, because he was indolent or vicious. In many of the states a qualification of freehold was required. He thought that a wise provision; and if any alteration was to be made, he should be in favor of placing it there, rather than upon personal property. As it was, he thought it valuable as a moral means, as part of that moral force so essential to the support of any free government. He would not diminish that, for in the same proportion it should be, from any cause diminished, would the foundations of the republic be weakened. He also considered it as unreasonable, that a man who had no property should act indirectly upon the property of others. If gentlemen would look to the statute book, to the business of the Legislature, or to the courts of law, how much of all that was done, would be found to relate to the rights of property. It lay at the foundation of the social state, it was the spring of all action and all employment. It was therefore, he apprehended, wholly inequitable in its nature, that men without a dollar should, in any way, determine the rights of property, or have any concern in its appropriation. He also contended, that the principle of the resolution was anti-republican. It greatly increased the number of voters, and those of a character most liable to be improperly influenced or corrupted. It enlarged the field of action to every popular favorite, and enabled him to combine greater numbers. The time

might come, when he would be able to command, as truly as ever a general commanded an army, sufficient numbers to affect or control the government itself. In that case, the form of a republican constitution might remain, but its life and spirit would have fled. The government would be essentially a democracy, and between that and a despotism there would be but one step. Such would be the tendency of the principle, and so far as it operated, it would change the structure of the constitution. The qualification which is required, was intended as a security for property. He considered it as a barrier, which ought not to be removed, and could not be, without danger to the State.

Mr. HOAR of Concord said that the question was only on reconsideration of the vote as it had passed, and it was not correct to consider it as modified, according to the suggestion of the gentleman from Littleton. He had not believed it possible that any considerate member would vote in favor of the resolution. He had heard it reiterated from all parts of the House, that no fundamental principle of the government was to be changed. This proposition did change a fundamental principle. It was not the admission or the rejection of a few votes in the existing state of things. But it was a change which might, at some time or other, produce a result widely different from what gentlemen apprehended. It went directly to sap the foundations of society. He asked if there were too many incentives to industry and economy at present? and appealed to the reverend gentleman from Littleton to say, whether in the sphere of his observation there had not been many instances of young men from seventeen to twenty-one years of age, stimulated by this provision of the constitution to an exertion which, by its effect on their character and habits, was useful to them in after life. Apprentices, and the sons of poor farmers were induced to lead a life of industry and economy, that when they arrived at the age provided by law, they might be prepared to exercise the rights of a freeman. This alone was sufficient to determine his vote. But there were other considerations. It was an anti-republican principle. He proceeded to state in what manner a rich man in a populous town might command the votes of men without any property, and consequently destitute of character. It now very seldom happened, that a man of industrious habits and regular life was excluded from the right of voting. Even men of character, who through misfortune are obliged to call on towns for aid, often have property enough to entitle them to vote. The household furniture exempted by law from attachment, is nearly enough to give the right. Very few but vagabonds are excluded.

Mr. BLAKE was in favor of reconsideration, because he thought the subject had not been fairly examined. He was not satisfied that the right of universal suffrage ought to be exercised, but many weighty reasons could be urged in favor of it, some of which he would state. He did not consider it as changing a fundamental principle of the constitution, if he did, he should oppose it. He

said that the constitutions of most of the states in the Union required no pecuniary qualification; those of South Carolina and Virginia, which require a freehold, were exceptions, and he did not mean to speak of the states newly admitted. The example of other states, however, was not of much weight, as we ought to be an example to ourselves. Life was as dear to a poor man as to a rich man; so was liberty. Every subject therefore, involving only life or liberty, could be acted upon, with as good authority, by the poor as by the rich. As to property, the case was different. But our constitution involves all three, and the question is, how the power in relation to them shall be parcelled out. Our constitution has made the senate the guardian of property. The senate is the rich man's citadel. There, and there alone, the rich man should look for his security. Every man who pays his tax—and he did not know why not paupers, as they were liable to military duty, ought to possess the privilege of voting. To deprive a man of this privilege till he acquires property, was an encroachment on the fundamental principles of our constitution. The constitutions of most of the other states give the right of voting to every man who pays his taxes; not mentioning anything about paupers. He said the requisition of property was in this town, for a long time, a dead letter, until the Legislature, a few years since, made some wise provisions concerning elections.

On motion of Mr. VARNUM the committee voted to rise—257 to 29—reported progress, and asked leave to sit again; which was granted.

Leave of absence was granted to Mr. COOKE of Edgartown, on account of the death of his father, and to Mr. NOYES, of Acton, on account of sickness in his family.

The House adjourned.

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#### TUESDAY, DECEMBER 12.

The House met at 9 o'clock, and attended prayers offered by the Reverend Mr. Jenks. After which the journal of yesterday was read.

Mr. DEARBORN of Roxbury offered the following resolutions, viz.:

*Resolved*, That it is proper and expedient so far to alter and amend the constitution, as to provide that the senate shall be apportioned among the several districts, into which the Commonwealth may from time to time be divided, according to the number of inhabitants in each.

*Resolved*, That it shall be the duty of the Legislature, at the first session, after the census, which is now taking under the authority of the United States shall be completed, and at every subsequent period of ten years, to cause the State to be divided into districts for the choice of senators, which shall be so formed of contiguous towns, as to contain, as near as possible, an equal number of inhabitants in each, without dividing any town.

On motion of Mr. DEARBORN the resolutions were referred to the committee of the whole on the senate, &c. .

On motion of Mr. AUSTIN of Boston, *Ordered*, That the resolutions offered by Mr. MORTON and others, relating to the council, be printed for the use of the members—117 to 13.

Mr. KEYES of Concord offered the following resolution viz.:

*Resolved*, That it is expedient and proper so to amend the constitution as to provide that paupers and persons under guardianship, shall not be entitled to vote for any officer under the government.

On motion of Mr. PRESCOTT of Boston the House went into committee of the whole, on the report of the select committee on the senate, &c., Mr. WEBSTER of Boston in the chair.

Mr. QUINCY said, that the proposition before the committee had been considered by those in favor, as well as those against it, as one for universal suffrage; but that it was not such a proposition. Universal suffrage is suffrage without qualification. Suppose the proposition adopted—still you have not universal suffrage. The qualification of age, and of sex, remains. Women are excluded—minors are excluded. The real nature of the proposition is the exclusion of pecuniary qualification. This remark is material, because the only principle alleged in favor of the exclusion of pecuniary qualification is just as strong in favor of the exclusion of every other qualification. Other gentlemen had alleged reasons in favor of the proposition from considerations of inconvenience and of expediency. But the only gentleman who had alleged in its favor a principle, as the foundation of a right, was his colleague (Mr. BLAKE.) His principle was this. "Life is precious. Liberty is precious. Both more precious than property. Every man, whose life and liberty is made liable to the laws, ought therefore to have a voice, in the choice of his legislators." Grant this argument to be just. Is it not equally applicable to women and to minors? Are they not liable to the laws? Ought they not then to have a voice in the choice? The denial of this right to them shows, that the principle is not just. Society may make a part of its members obnoxious to laws, and yet deny them the right of suffrage, without any injustice.

Again—it has been said that pecuniary qualification was contrary to the spirit of our constitution. Those who took this ground had not favored the Convention with their definition of the spirit of our constitution, though it was very plain from the course of their arguments that what they understood by it, was a spirit of universal or unlimited liberty. Now, this is not the spirit of our constitution; which is a spirit of limited liberty; of reciprocal control. Reduced to the form of a definition, this is the meaning of the term, spirit of our constitution—*The will of the people, expressed through an organization by balanced power.* Every man, therefore, who would compare any given provision, with the spirit of our constitution, ought not to recur to principles of abstract liberty, but to principles of balanced liberty. With respect to those checks and balances, which according to the form of our constitution, constitute the character of Massachusetts liberty, those gentlemen take a very narrow

view of the subject who deem that they exist only in the separation of the powers of government into the legislative, judicial and executive ; or in the division of the legislative power among three branches. Every limitation of the exercise of any right or power, under the constitution, makes a part of that balance, which will be disturbed by its removal. The provision of a pecuniary qualification is of this nature. It is one of the checks in our constitution. How it operates, whom it affects, whom it benefits, are worthy of consideration. In the course of the argument in the Convention, it has been considered as a check, in favor of the rich, and against the poor. Now the fact is, that it is directly the reverse. If we should suppose the rich, acting as a class, this is the first provision, which they ought to expunge. And on the other hand, it is the last, with which the poor ought to consent to part. In its true character, this provision is in favor of the poor, and against the pauper ;—that is to say, in favor of those who have something, but very little ; against those who have nothing at all. Suppose all qualifications of property taken away, who gains by it ? The poor man, who has just property enough to be qualified to vote ? Or the rich, whose property is a great surplus ? The rich man's individual vote is, indeed, counterbalanced by it, as well as the poor man's. But the great difference is this, that the poor man has thus lost his political all ; he has no power of indemnifying himself. Whereas the rich, by the influence resulting from his property over the class of paupers, has a power of indemnifying himself a hundred fold. The theory of our constitution is, that extreme poverty—that is, pauperism—is inconsistent with independence. It therefore assumes a qualification of a very low amount, which, according to its theory, is the lowest consistent with independence. Undoubtedly it excludes some, of a different character of mind. But this number is very few ; and from the small amount of property required, is, in individual cases, soon compensated.

At the present day, the provision was probably worth very little. In the present results of our elections, it would not make one hair white or black. But prospectively, it was of great consequence. In this point of view he put it to the consideration of the landholders, and yeomanry of the country. The principle was peculiarly important to them. Everything indicates that the destinies of the country will eventuate in the establishment of a great manufacturing interest in the Commonwealth. There is nothing in the condition of our country, to prevent manufacturers from being absolutely dependent upon their employers, here as they are everywhere else. The whole body of every manufacturing establishment, therefore, are dead votes, counted by the head, by their employer. Let the gentlemen from the country consider, how it may affect their rights, liberties and properties, if in every county of the Commonwealth there should arise, as in time there probably will, one, two, or three manufacturing establishments, each sending, as the case may be, from one to eight hundred votes to the polls depending on the will of one employer,



one great capitalist. In such a case would they deem such a provision as this of no consequence? At present it is of little importance. Prospectively of very great. As to the inconvenience resulting from the present provision, this was amply balanced by its effect as a moral means, and as an incentive to industry. But these had been already well and satisfactorily elucidated by his colleague (Mr. DUTTON) and the gentleman from Concord (Mr. HOAR.)

Mr. SLOCUM of Dartmouth said—he recollected that in 1775 the saying was current, that taxation and representation should go hand in hand. Take this text, and apply it to the men who are excluded by this qualification from the rights of voting. Who are they? the laboring parts of society? How long have they been fettered? Forty years. Who achieved our independence? This class of men. And shall we then disfranchise them? I hope not. As the constitution now is, these men are deprived of voting, and must stand by and see the rich putting in their votes “like Patience, on *the* monument, smiling at Grief.” If a man was a Newton or a Locke, if he is poor, he may stand by and see his liberties voted away. Suppose an invasion should happen—these men would be obliged to come forward in defence of their country. He felt conscientiously bound to give them the right of voting, and he hoped the motion for reconsideration would not prevail.

Mr. AUSTIN of Boston said that gentlemen, who were unwilling to change the principles of the constitution, instead of striking out this qualification ought to increase the sum, on account of the change in the value of money; he thought, however, that it would be impossible for them to effect this, and experience had shown the impolicy of requiring the present qualification. He would not contend against the right of requiring it, though there were strong arguments on that side, but he considered it inexpedient. The provision could not be carried into effect; it was the cause of perjury and immorality—it did not prevent a fraudulent man from voting, who owed more than he was worth, but debarred an honest poor man who paid his debts—and it tended to throw suspicion of unfairness on the municipal authority. He asked, what will you do with your laboring men? they have no freehold—no property to the amount of two hundred dollars, but they support their families reputably with their daily earnings. What will you do with your sailors? Men who labor hard, and scatter with inconsiderateness the product of their toil, and who depend on the earnings of the next voyage. What will you do with your young men, who have spent all their money in acquiring an education? Must they buy their right to vote? Must they depend on their friends or parents to purchase it for them? Must they wait till they have turned their intelligence into stock? Shall all these classes of citizens be deprived of the rights of free-men for want of property? Regard for country, he said, did not depend upon property, but upon institutions, laws, habits and associations. This qualification was said to encourage industry;—it was better to depend on the principle of character and independence

which a man feels in exercising the privilege of a freeman. If taking away this qualification would weaken the moral force in the community, as had been urged, he should be for retaining it; but that force depends on education, and the diffusion of intelligence. One gentleman (Mr. QUINCY) had looked forward to our becoming a great manufacturing people. God forbid. If it should happen, however, it was not to be expected, that this modicum of property required would exclude the laborers in manufactories from voting. It was better to let them vote—they would otherwise become the Lazaroni of the country. By refusing this right to them, you array them against the laws; but give them the rights of citizens—mix them with the good part of society, and you disarm them.

Mr. THORNDIKE of Boston was in favor of but few alterations in the constitution and opposed to this. He rose to speak only of the practical effect of this provision in the constitution, so far as it had come under his observation. He had long been acquainted with the sea-faring men in a neighboring town of about four thousand inhabitants, and had witnessed there the effect of the provision in the constitution upon young men under age, which had been described by the gentleman from Concord, yesterday, as operating upon young men engaged in agricultural pursuits. They were generally anxious to amass the little property necessary to give them the right of voting, and this anxiety had a favorable effect on their habits and character. The case of seamen had been alluded to as entitled to consideration. They had been described as men who scatter a great deal of money and do not save enough to make them voters under the constitution. The votes of seamen of that description, he said, ought not to be received. They were the votes of their owners, or of intriguing men who wish either to get into office themselves or to get their friends in. If the qualification was not high enough to answer all the objects for which it was intended, that was no reason for rejecting it altogether. It might be of great use. If frauds were committed, measures might be taken to prevent them and to obviate the objections on that ground.

Mr. RICHARDSON of Hingham, in a written speech, observed that in accordance with an article in the declaration of rights, there ought to be a representation on the foundation of equality. This could not be, so long as any people, who are taxed, do not vote. The right of voting was a grand and essential privilege of freemen. It was necessary, in order to check the growing aristocracy, which is most to be dreaded in a republic, to extend the privilege. Young men who bear arms, were now treated as slaves. Apprentices and other young men were discouraged under this constitution; when called upon to defend their country, their ardor would be chilled. Want of property in a free government, should be the last thing to prevent men from voting, unless the possession of property were shown to be necessarily connected with virtue. The present constitution would have excluded our Savior from this privilege. He hoped the vote would not be reconsidered.

Mr. FOSTER considered this a distinct question from that of requiring a pecuniary qualification for holding office. No man had a right to office, but all men had a right to a voice in the election of public officers. He assumed it as a fundamental principle that taxation and representation should go together. All rateable polls were counted in giving a right of representation, and the persons who contributed to give the right to representation, ought not to be deprived of the privilege of voting for the representative. He considered the rights of property as secured by that part of the provision relative to the senate, which apportioned the senators according to property.

Mr. FLINT of Reading said the poor man would be worse off than he is now, if this talk about equal rights were carried into effect. He asked what right a poor man possessing a hundred dollars, and having ten children, had to call upon a man possessed of a hundred thousand dollars to educate and help support his children? take away this assistance and you affect the poor man's life and comforts, which he would consider of much more consequence than the privilege of voting. He hoped there would be a reconsideration.

Mr. DANA of Groton unhesitatingly said that requiring this qualification was an aristocratical and anti-republican principle. It was introduced into the constitution forty years ago, when the principles of government were not so well understood as at present, and when the country was not assured of its independence. He considered it as a mischievous principle which had been the cause of much moral corruption.

Mr. WARD of Boston did not consider this a contest between the old and the young; or, between the rich and the poor, but as a question, which course was most likely to promote the public good. That course of proceeding which was most likely to secure the rights of all classes of people was the proper one. If to require no pecuniary qualification to make a voter was the most likely mode of securing the best good of the whole, it ought certainly to be adopted. On the contrary, if to confine the right of voting to persons who are directly interested in the protection of the rights of property, as well as of life and liberty, was the most probable mode of securing the enactment of just, equal, and useful laws, there could be no doubt that the people have a right, and that it is their duty so to limit the privilege of suffrage. He stated a variety of considerations which induced him to believe that the qualification of property had a tendency to secure the government in the hands of men who would have a greater interest in promoting the general good. If this qualification produced such evils as perjury and immorality, he was sorry for it; but the same objection would lie against requiring other qualifications. The qualifications of age and residence were commonly allowed upon the assertion of the voter himself. He said it was of more importance even to the persons excluded, that there should be a good government, than that they should bear a part in electing the officers to administer it.

Mr. BALDWIN was inclined to extend the privilege without a qualification of property. He had always approved of the principle that taxation and representation should be united. It is asserted in the bill of rights, "all men are born free and equal." Some men are born entitled to great property. This property cannot give them a right of voting, but the right belongs to all persons, who are born equal, and should be equally entitled to all the privileges of freemen. If property gives a right of voting, why should not a man worth one hundred thousand dollars, put in an hundred votes, as well as one who has two hundred dollars put in one vote? He thought we could not, without an infringement of this first principle of our excellent constitution, retain the pecuniary qualification. Mr. KEYES of Concord had offered this resolution out of regard to the moral order which he thought ought to be preserved in the community. As a moral man he was in favor of the resolution, and hoped it would prevail.

Mr. SAVAGE said, if the vote passed against the reconsideration, it would be against the sense of nine-tenths of the committee. All who had spoken in favor of the principle, had rested it on the favorite principle of the revolution, that taxation and representation should go together. But the proposition as it has passed the committee goes to exclude the very principle on which they found their argument. He did not agree in the opinion of the gentleman from Groton (Mr. DANA) that those who framed our constitution were ignorant of the principles of free government; nor was there any truth in the apology for its supposed imperfections, that in 1780 they were not certain that our independence would be maintained. There was not a child of 15 years old, then in the Commonwealth, who did not feel sure and see that our independence might and would be secured. The constitution was not framed upon any new principles that were imperfectly understood, but upon the principles of their fathers and grandfathers, which had long been practised on and were well understood. In relation to the subject of the resolution, he thought there ought to be a change in the constitution—a change that should accommodate it to the principle on which gentlemen had supported the resolution, and put it on the footing that those who bear the burden of supporting government, should have the right of voting. A gentleman had stated that he had a proposition to make, the object of which would be to introduce this principle into the constitution. But it could not be received unless the vote was reconsidered. Why should not the vote be reconsidered, to give gentlemen an opportunity to have precisely what they want? He did not wish to exclude young men, who are useful members of society, and who pay a tax for the support of government. Let it be provided that those who pay their taxes shall vote. But there are many men who never pay a tax, and never would pay if they were assessed, but who, by the resolution, would be admitted to the right of voting. There were in the town of Boston about 6000 voters, and if all male persons over 21 years old were admitted, there

might be 2000 more. Of these 2000, not one quarter pay any tax, and ought not to be allowed to vote on the principle upon which the resolution has been supported.

Mr. DANA said he did not mean to charge the framers of the constitution with want of intelligence. They retained a small relic of ancient prejudices, and he hoped we should get rid of it. In respect to another point, he said Cornwallis was not taken at the time this constitution was made, and much apprehension was entertained in respect to our independence.

Mr. VARNUM was yesterday impressed with an idea that it would be proper to reconsider this vote, but since he had seen the resolution of the gentleman from Concord, offered this morning, he thought it was unnecessary. The object proposed by the reconsideration, could be provided for by an independent resolution. He was in favor of rejecting the pecuniary qualification. If any was necessary that now provided, was too low to answer the purpose. Experience had shown that it had done no good, but had been frequently the means of raising ill blood and producing confusion. When a man becomes twenty-one years of age, let him be a freeman—receive him into the bosom of society, and he will be more likely to be a useful citizen. He alluded to the case of sailors who are by this provision deprived of their right of suffrage. Without them the country would have been comparatively worth nothing. We cannot do without them, and they ought not to be excluded from the right of voting. They ought to be nourished and cherished.

Mr. BOND of Boston said, that the reverend gentlemen from Boston and Hingham (Mr. BALDWIN and Mr. RICHARDSON) quoted the declaration of rights, in the same way that people sometimes garble the scriptures. The whole constitution should be taken together. They quote the declaration of rights to prove that requiring this qualification of property is contrary to the principles of the constitution, when it is the constitution itself which requires this qualification.

Mr. FARWELL of Cambridge did not rise to enter into the debate, but to call for the previous question.

The CHAIRMAN. There is no previous question in the committee.

Mr. LELAND was aware that much evil had existed under the old system. There had been much abuse—but this was no reason why we should run into another evil. He asked if gentlemen were prepared to go the length of the resolution. The objects of government were the security of property, as well as of personal rights. If this resolution is most likely to secure these rights it ought to be adopted. But it must be known to every one that there are persons in every town, who are never put into a tax bill, because the town officers know very well that no tax could be collected from them. The principle on which the resolution had been defended was, that those who paid taxes ought to have a right to vote. He proceeded to illustrate his argument by the application of the resolution to the persons in Boston not taxed.

The question for reconsideration was taken and decided in the affirmative—200 to 200, the chairman giving his casting vote in the affirmative.

Mr. BLAKE moved to amend the resolution so as to provide that every citizen of this Commonwealth who is subject to pay and does pay taxes in the town wherein he resides, including also ministers of the gospel and all others who are or may be specially exempted by law from taxation, shall have the right to vote in the election of public officers in this Commonwealth. Mr. B. stated his reasons for offering the amendment.

The amendment was agreed to.

The question on the resolution as amended was then taken, and decided in the affirmative.

Mr. NICHOLS moved to amend by striking out the words, "does pay."

The CHAIRMAN. It cannot be done. An amendment of the resolution having been adopted, that amendment cannot be amended. It may possibly be done in convention, but it cannot be done in committee.

The committee proceeded to take up the resolutions offered by Mr. DEARBORN, the first being that which goes to provide that the senate shall be apportioned among the several districts, according to the number of inhabitants in each.

Mr. DEARBORN supported the resolution in a speech of considerable length—of which we can give but a brief abstract. He did not know whence the principle, by which the senate is apportioned by the present constitution, was derived. It was not to be found in the organization of any of the republics, ancient or modern. It did not exist in Greece, Rome, Venice or Genoa. It was found in the British House of Lords. The members of that house support the rights of the aristocracy, and are their own representatives. In the United States there is but one class of people. They are all freemen and have equal rights. The principle of a representation of property in our constitution was not derived from the neighboring states. New Hampshire was the only state whose constitution contained a similar provision. If the principle was a good one, it was remarkable that it had not been adopted in any other state. The only reason he had ever heard of to justify the principle was, that the taxes are paid in proportion to property, and that the principle of apportionment was designed for the protection of property. But this protection was not necessary. Property secures respect whenever it is not abused, and the influence of those who possess it is sufficient for its protection. He apprehended nothing at present from the representation of wealth. But the time might come when the accumulation of property within twenty miles of the capital would be sufficient to control the senate. At present the county of Berkshire, of about equal population with Suffolk, would have but a third part of the representation, and the man of large property in the former county would have but a third part of the influence through the senate which was enjoyed by a

man of the same property in the latter county. This was not just, equitable nor proper. He appealed to the magnanimity of the rich to yield to the poor their equal proportion of rights. The principle might be adopted now, but the people would be dissatisfied with it, they would constantly protest against it, and it would be at some time or other necessarily yielded to their importunity.

The question on the resolution was then taken and decided in the affirmative—236 to 145.

The question on the other resolution offered by Mr. DEARBORN, which makes it the duty of the Legislature after each decennial census to form the state into districts, was taken up and agreed to.

Mr. DANA wished to inquire of the chairman of the select committee, whether the resolutions just passed did not supersede a part of the resolutions which had been agreed to in committee of the whole yesterday.

Mr. PRESCOTT thought they did. He said that the committee who reported those resolutions had considered the whole as forming one system. Every gentleman of the committee considered that the principle of apportionment in the senate provided in the constitution, and which they had not proposed to change, was a reason for recommending a system of representation in the other house, which gave an advantage to the small towns at the expense of the large towns. The proposition for paying the members out of the treasury was a part of the system. This would be manifestly unjust if the towns which pay the largest proportion of tax, were to be deprived of the privilege which in consequence of that tax they enjoyed of representation in the senate. He was proceeding to mention the several features of the system which were considered as depending on one another, when

The CHAIRMAN said that no question was before the House.

Mr. PRESCOTT said that he rose to answer the inquiry of the gentleman from Groton.

Mr. NICHOLS said that to give the gentleman an opportunity to pursue his remarks, he would move a reconsideration of the vote for accepting Mr. DEARBORN's first resolution.

Mr. DEARBORN acceded to the propriety of opening the whole subject, as the resolution had passed without much debate.

Mr. PARKER was not very anxious about the system of representation for the senate which should be adopted. But if a part of the system reported by the select committee was rejected, the vote on the remainder would be different. The propositions for the reduction of representatives and for paying them out of the public treasury had been agreed to on the principle that the senatorial representation should remain as it is fixed by the present constitution. If it was understood that the principle of representation in the senate was to be changed, it could not be expected that the votes which had passed should be adhered to. It was manifestly unjust that Boston, for example, which was reduced to fourteen or fifteen representa-

tives—a number considerably less than its proportion according to population—should be held to pay for fifty representatives.

Mr. DEARBORN said that it had been his intention, if the resolution passed, to submit a proposition that the representatives should be distributed in proportion to population—that three, four or five, according to the opinion of the House, should be assigned to each senatorial district. He had no idea that the senate should represent population, and the house be represented in the mode proposed in the report.

Mr. QUINCY hoped that the committee would accede to the liberal proposition of the gentleman from Roxbury, and allow of a reconsideration that the subject might be discussed in a manner suited to its importance.

Mr. DWIGHT of Springfield said that he had not expected that the principle of representation in the senate would have been touched. He considered the resolutions reported by the select committee as forming one system, and that a part should not be adopted without the rest.

Mr. LINCOLN said that he had not considered the report of the select committee, as a system which was to be accepted in the whole or rejected. He had, however, no objection to the reconsideration.

The motion for reconsideration was agreed to—260 rising in favor of it.

On motion of Mr. STORY, the committee rose, reported progress, and had leave to sit again.

Mr. LYMAN of Northampton offered a resolution, proposing such an amendment of the constitution, that the Commonwealth should be divided into districts, for the choice of representatives, no district except Boston, to contain more than 15,000 inhabitants, and the number of representatives not to exceed one for every 3,000 inhabitants.

Mr. LINCOLN offered two resolutions, proposing such an amendment of the constitution, that every town now entitled to a representative shall still have one. Every town containing 3,000 inhabitants to have two—towns of 6,500 to have three—10,500 to have four, and so on. Adding 500 each time to the last increasing number.

The resolutions offered by Mr. LYMAN and Mr. LINCOLN, were committed to a committee of the whole House, and ordered to be printed.

The House adjourned.

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#### WEDNESDAY, DECEMBER 13.

The House met at 9 o'clock, and attended prayers offered by the Rev. Mr. Palfrey. After which the journal of yesterday was read.

Mr. WEBSTER of Boston offered the following resolution, viz.:



*Resolved*, That at all the reports of the committee of the whole, not acted upon, be made the order of the day for Monday next, at 10 o'clock, and be considered and determined in the order in which they shall have been reported—and that a committee of members be appointed to reduce such amendments as have been or may be agreed upon, to the form in which it will be proper to submit the same to the people for ratification.

The blank was filled with *nine*, and the resolution was adopted.

The PRESIDENT said he should require time to select the committee.

Mr. DEARBORN of Roxbury offered two resolutions, which he wished to be considered as part of a series with the two which he had before presented relating to the senate, in substance as follows, viz. :

3d. *Resolved*, That the house of representatives shall consist of members.

4th. *Resolved*, That the representatives shall be apportioned among the legislative districts according to the population in each.

On motion of Mr. DEARBORN they were referred to the committee of the whole on the senate, &c.—119 to 85.

On motion of Mr. PRESCOTT of Boston the House went into committee of the whole on the unfinished business of yesterday ; Mr. WEBSTER of Boston in the chair.

On motion of Mr. PARKER of Boston the committee first took up the consideration of the second report of the select committee, relating to elections. The report was read, and the question was upon the first resolution, proposing that the town meetings for the election of governor, lieutenant governor, senators and representatives, shall be holden on the same day in each year.

Mr. SIBLEY of Sutton moved to amend the resolution so as to include counsellors.

The CHAIRMAN observed that probably the gentleman and the House generally, were not aware of the state of the report of the select committee on the subject of counsellors. He said that as it had been committed to a new committee of the whole, the proceedings of the first committee of the whole were annulled.

Messrs. SULLIVAN, PICKMAN and PRESCOTT made objections to the amendment.

The amendment was negatived.

Mr. AUSTIN of Boston moved to strike out "and representatives," as more than one day might be requisite to complete the elections in large towns.

Mr. LINCOLN of Worcester objected to the amendment, because it was desirable, that one town should not be influenced in its elections of representatives, by the result of the elections in other towns.

Mr. JACKSON of Boston said that in respect to the governor, &c., only one balloting was necessary, but it might be otherwise in the choice of representatives, in towns entitled to elect several. In Boston, where forty-five were sometimes ballotted for, if there should be split-tickets, two or more ballotings might be required ; in which case more than one day would be requisite to complete the elections.

The object of the gentleman from Boston would be obtained by adjourning from day to day, till the election was finished. Some persons thought that towns already possessed this power, and he was inclined to think so himself, though he did not know what would be his opinion upon an examination of the subject. It was better, however, to remove all doubt, by using express words. He had prepared an amendment with this view.

Mr. AUSTIN withdrew his amendment to give place to Mr. JACKSON's, which, modified at the suggestion of Mr. PICKMAN, and with a blank filled, was adopted as follows: "But (the town meetings) may be continued from day to day by adjournment, for the purpose of choosing representatives for such time as may be necessary to complete such elections, provided that no meeting shall be continued more than three days."

The resolution was likewise altered, so as to extend to districts, and passed as amended.

The second resolution related to the day on which these elections should take place.

Mr. PRESCOTT moved to fill the blank with the second Monday of November.

Mr. HUBBARD preferred some other day than Monday, because the Sunday preceding would, in this town, be spent in electioneering. He proposed Wednesday.

After some slight debate, in which Messrs. DEARBORN, HOLMES, DANA, WALTER, MARTIN, HOYT and PARKER took a part, relating as well to the month as to the day of the week,

Mr. PRESCOTT's motion was adopted, and the resolution being altered for conformity so as to extend to districts, was passed.

The third and fourth resolutions were adopted without debate.

*Apportionment of the Senate.*—The committee proceeded to the consideration of the resolution under discussion when the committee rose yesterday, viz., the resolution for dividing the Commonwealth into districts for the choice of senators according to population.

Mr. PARKER (President) trusted no apology was necessary for his rising on this occasion—he thought he had not consumed more than his share of the time of the Convention; with the gentleman from Littleton, he hated long speeches, except such as that which the gentleman made when he made the declaration, and which seemed in his mind (Mr. F.) to be an exception. Gentlemen from all parts of the House had prefaced their remarks with a profession of no intention to violate any fundamental principle of the constitution; yet some of those same gentlemen had yesterday, in part, voted for a resolution which, in his opinion, violated one of the vital and fundamental principles of the constitution. He trusted it was from a misapprehension of the nature of the proposition—he was certain that in a number of individuals this was the case, and that having had time for reflection, they had changed their opinions. In the opinion of the framers of the constitution the most important principle in the form of government, was the system of checks and bal-

ances. The sentiment had been repeatedly expressed here, that a system of checks and balances in the different departments of the government, and between the branches of the Legislature, was essential to the preservation of liberty. There had formerly been doubts on this subject, but it might now be considered to be the unanimous voice of the civilized world; and the general prevalence of the doctrine might be in a great measure attributed to the eloquence and learning of one who was now a member of the Convention. The sentiment was expressed in the preamble to one of the reports made to this Convention, and afterwards, though no practical purpose was intended by it, it was thrown into the form of a resolution, was unanimously adopted, and is now on record as expressing the opinion of every individual in this House. It could not be expected therefore that there should be any vote of this body inconsistent with that principle. He could have had no apprehension until the passing of the vote yesterday, of any disposition to abolish the check which the two houses of the Legislature have upon each other. What was the principle that was considered of so much importance? Not merely having two houses chosen at the same time, in the same districts and by the same persons—but meeting in two rooms; two bodies thus constituted would come together with the same views and agitated by the same passions. The principle required that there should be two bodies organized in such a manner that each might have an effectual check upon the other. The gentleman from Roxbury said yesterday that the system in our constitution was a novel one and no where else to be found in the civilized world. If it was so, he (Mr. P.) considered it an honor to Massachusetts to have invented such a system. That gentleman had travelled over classic ground to show that there were no such examples, but there was no more analogy between the ancient republics and the governments now to be found in the United States than there was between the most cruel despotism of Asia, and the freest government on earth. What is the senate of Massachusetts? It comes from the people, and is chosen by the people, and it is not in the power of anybody of men, however rich, to obtain an undue influence over it. Suppose there are among its numbers five or six men who are rich, they can have no more power than any other members. Rich men are no more likely to be elected than in the other branch. They have no more influence in the elections, as they go to the polls with no more power than the poorest voter. He thought that the gentleman in censuring the organization of this body, was led away by his enthusiastic admiration for ancient times. Mr. PARKER asked, should there be a check of one branch of the Legislature upon the other? Every gentleman answered that there should. What should it be? In many of the governments of the states of the Union there was an organization similar in substance to that in ours, though the mode was something changed. The senate of the United States is chosen in a different manner from the house of representatives; it is chosen by the legislatures of the

states, representing the sovereignty of the states. There was no state in the Union except Connecticut, Rhode Island and Maine, which had not established a check, by a different mode of representation of the people, in the two branches. In some, the distinction was made by enlarging the qualifications of the electors—in others in the qualifications of the persons elected—and in others by giving a longer duration in office. It would no doubt be more acceptable to the people of this State to preserve the present mode than to prolong the term of office. In New Hampshire an organization was adopted similar to ours. In New York, the senators were chosen for four years and no persons were allowed to vote in the election of them but freeholders. The senate was therefore more directly formed upon property than ours. In Pennsylvania the members of the senate were elected for four years. In Delaware for two years, with a qualification of property in the electors. In Maryland, the senate was chosen for four years. In Virginia, for four years. In North Carolina the senators are required to be possessed of three hundred acres of land in fee. In South Carolina no person can be elected representative but such as are possessed of five hundred acres of land and ten negroes. And for the senate the qualification is a thousand acres of land or an equivalent in personal property. He proceeded to state other examples. There was a great number of free republics who have grown up in the sunshine of liberty, and with the example of the whole world before them, have settled their forms of government upon a principle similar to that which is found in ours. It was extraordinary that any one should say that this was a novel principle, and for that reason to be expunged from our constitution. The mode was a little different, but it was here more consistent with the principles of civil liberty, than in any of the instances which he had enumerated. The representation in our Legislature was founded upon two principles—in the most numerous branch, upon the proportion of population, and in the other, on the proportion of taxation. The latter principle did not give rich men any greater influence in the senate; it gave them no more influence in the choice of the senate; it was merely that the people should be represented in the senate in proportion to the contributions of each district to the support of the public burthens. In the lower house the proportion of numbers was departed from only in favor of towns that had been before represented. On what did the right of towns rest? It was on the ground that it was granted to them by the constitution. On what does the right of counties or districts to be represented according to their taxation rest? It was secured to them by the constitution. Both, it was true, the people might alter, but if one system was altered, the other should be. If this resolution was accepted, we ought for consistency's sake to follow up the measures proposed by the gentleman from Roxbury, and divide the State into equal districts for representatives. He proceeded to illustrate the injustice of destroying the principle of representation in the senate, and preserving to the towns their right of representation in the other

branch, and stated the precise principle on which the senatorial representation is founded. He said that in examining the constitution, he found ample reasons to satisfy him that we were not wiser than our predecessors. He revered the constitution, though he was not afraid to touch it, because there were undoubtedly, through inadvertence on the part of its framers, or from a change of circumstance, defects which might be remedied. He hoped gentlemen would pause before they adopted any measure which should subvert its fundamental principles.

Mr. LAWRENCE of Groton said the resolution before the committee was a proposition to introduce a new principle into the constitution. He should think it proper to consider it, not as an abstract proposition, but as connected with the subject of the house of representatives. The gentleman from Roxbury, (Mr. DEARBORN) proposed to make population the basis of both branches of the Legislature. In this plan there was something like consistency. Another mode of constituting the house of representatives, was the one reported by the select committee; and that proposed by the gentleman from Worcester, (Mr. LINCOLN) was a third. He was glad to see all these plans brought forward, because they might be compared together, and because it was improper to organize one branch of the Legislature without having reference to the other. If we were forming an original constitution, it might perhaps be proper to adopt the plan of the gentleman from Roxbury; but we were to consider the constitution under which we have lived for forty years. Our towns had long been in the exercise of corporate rights, and would be unwilling to give them up. He would not say that we might not with their consent, change the principle of choosing representatives, but they would be unwilling to change, and he thought the present system was the best. More talents were brought together, and there was a better, and in times of difficulty, a more efficient representation of the whole Commonwealth, than could be obtained in any other way. He would not depart from this system unless it were necessary to preserve equality; but if the plan of the gentleman from Roxbury, in regard to the senate, should prevail, this could not be retained with consistency. He then proceeded to consider the scheme introduced by the gentleman from Worcester. What was the basis of it? Corporate rights. What were corporate rights? Property. He said it was the most unjust and unequal representation that could be devised. It was demonstrable, that it would enable one third part of the population to secure a majority in the house of representatives. Another objection to it was, that representatives ought to be paid out of the public chest. To provide for this was one of the objects of calling this Convention, but on this plan it would be glaringly unjust. Mr. L. said, that as the present principle of the senate had been in operation forty years, and no inconvenience had been experienced from it, it was proper to adhere to it, and urged the necessity of retaining it on account of its connection with the system reported by the select committee.

Mr. SLOCUM spoke in favor of the resolution.

Mr. LINCOLN requested that before his proposition was declared unequal, it might be examined, and before he was pronounced unjust, he might be heard in his defence. The question now under consideration was on what principle should the representation in the senate be founded? He agreed in the sentiment that a free government must be founded on a system of checks and balances—and it was on this principle that he supported the resolution offered by the gentleman from Roxbury. But he did not admit that to obtain this check it was necessary to assume the principle of a representation of property in either branch. It was attained by adopting a different mode of representation for the two branches as well as a different principle. The object of a check was equally attained by adopting different qualifications for electors, or different periods of election. If it was shown by argument, by experience, or by arithmetical calculation that any principle was unequal, that ought to be abandoned, and another adopted not susceptible of the objection. He should proceed to show the inequality and unjust operation of the old principle, and then endeavor to show that the effect contemplated from checks may be secured by another principle not liable to these objections. If it should be shown that representation according to valuation was not just, and that the object could be attained by letting the whole people vote for one branch, and freeholders only for the other—by choosing one for two years and the other for one, or in any other mode which is not unequal—this principle should be abandoned. He admitted that if senators were to be chosen from certain districts, and representatives from the same, and for the same period, according to the plan of the gentleman from Roxbury, there would be no check. But it was not so with the plan which he had proposed. He had proposed that the representatives in the other branch should be chosen by towns—and the system would then be analogous to that of the Congress of the United States, reversing the terms only, one representing the corporations of towns and the other the population. Was the principle of representation in the senate equal and just? Our government is one of the people, not a government of property. Representation is founded on the interests of the people. It is because they have rights that they have assumed the power of self government. Property is incompetent to sustain a free government. Intelligence alone can uphold any free government. In a government of freemen property is valuable only as the people are intelligent. Were it not for a government of the people, the people would be without property. But it is contended that this system is justified by another principle. Representation and taxation have been described as twin brothers. But this principle has not been fully understood. It does not follow that there shall be an unequal representation, that taxation may be represented. It is only necessary that all who are taxed should be represented, and not that they should be represented in proportion to their tax. Boston would be

represented if it had but a single member. This was the principle which was contended for in the revolution, and that revolution would never have been effected if we had had a single representative in the British parliament. Secure the right of representation; but in the regulation of that right, you may restrict it to any proportion whatever. Whether you are represented by one or forty-five, it is utterly in vain to complain that you have no representation. But any other distribution of representation than according to population, is unequal and unjust. He alluded to the case mentioned yesterday by the gentleman from Roxbury of one senator for the county of Suffolk for every 7,500 inhabitants, while there was in the county of Berkshire but one for every 20,000, which he pronounced to be an instance of most gross and cruel inequality. He stated the case of an individual lately deceased whose property of 1,300,000 dollars alone, would have as much influence in the senate as 1300 independent farmers with a property of 1000 dollars each. This principle conferred upon a dangerous part of the community an undue and unwarrantable share in the representation. A man of 1,300,000 dollars property surrounded by 1299 others of no property, confers on them an influence equal to the same number of independent men worth 1000 each. He contended that if it was a sound principle that property should confer the right of representation, it ought not to be restricted, and Suffolk should have eight senators. Imposing the restriction was admitting that the principle was false and unjust. Taking population as the basis, no inequality would result. He protested against any misapprehension of his feelings and motives—he had no disposition to excite jealousies, nor to prevent the exercise of rights—if they were founded upon principle. He professed a great respect for the people of the metropolis—but he protested against their borrowing, through the respect entertained for the town, any influence that was not secured to every other part of the people.

Mr. SULLIVAN said that he had abstained from taking part in debate for the reason that those gentlemen who had been deputed to consider particular parts of the constitution, were most competent to show the reasons on which their reports had been founded. That having been on the legislative committee, he thought it might be proper to take some part in this debate, on the principles on which the report of the select committee rested. That when a constitution is to be formed originally, or a constitution is to be revised, the governing object is, to compromise and conciliate as to conflicting interests, and to produce a result in which a majority may agree. The select committee were impressed with the necessity of reducing the number of representatives—and of reducing the expense of legislation. But on the other hand the privilege so long had by the towns, of being represented in the General Court, could not be abandoned. Besides these considerations the committee could not disregard the expression of public opinion, repeatedly occurring in the house of representatives, that the members should be paid from the public treasury. The purpose of the committee was to compare

opinions, and to concede on one side and the other, until some result was obtained, which could be reported with confidence. That with such inducements he had yielded his own opinions, and that he had consented to a scale of representation, very favorable to *small towns*, and to payment out of the public treasury, provided that the principle of the senate might be preserved. Not that the principle of the senate ought to be *purchased*. That principle was more defensible than any one in the constitution. But in the process of arrangement respect must be had to the impressions which were entertained, by men whose opinions are always entitled to respect. Upon such motives he had assented to the report of the committee, and was decidedly of opinion, that if it could not be supported, the convention would find itself under the necessity of establishing some other system embracing the whole subject of legislation. Mr. S. said he doubted whether the people had sent us into a Convention to change any of the fundamental principles of the constitution; and that if it had been submitted to the community to decide whether such power should be given, they would have refused it by a great majority. That the people must be presumed to be satisfied, by their own experience of the present constitution; that they desired no change but such as the circumstances of the Commonwealth had rendered necessary. That a glance at the constitution would show, that as a whole, it is the *most perfect system* that human wisdom had ever devised. It is in America, for the first time since human society has been known, that there has been applied to a *republican* government the true principle of checks among the departments of government, whereby each may be kept in its proper sphere of action, and by acting rightly itself, compel the other departments to do the same.

This principle has been known and applied (with some great defects) in one government only in the world, before our own; and these defects are, perhaps, hastening (under peculiar circumstances) that government to some great and serious change. Experience has developed no defect in our system. It may be pronounced in principle to be perfect—and ought to be held sacred. It is impossible to imagine a more perfect system in substance, than that which we have been living under. The executive power arising from among the people; and for a short term. The people reserving for themselves the power to take their fellow-citizen from the elevation which they voluntarily gave him, and of confounding him with the multitude, whenever they find one whom they prefer—and an executive council being a negative on the governor, and keeping him within proper limits. An organization of the legislative power into two branches; each having a negative on the other—and the executive a qualified negative on both. A judicial power totally separate from either of the others, but vested, in extreme cases, with the necessary power of deciding, whether the Legislature have transcended, by accident or mistake, their limit of authority—a power exercised only in cases of most obvious and urgent necessity. What



system of checks and balances was ever more perfect in principle, or practice—and how cautiously ought we to proceed in recommending any essential change in its features. The proposition now is, to make a change, and one of alarming character. Our progenitors saw the necessity of establishing such a difference between the two branches of the Legislature, as to make not a *nominal*, but a substantial check. The principle of the house of representatives is *equality*, perfect equality as to numbers which are to be represented ; in the senate, a representation not founded on numbers, but on a principle designed to distinguish this branch essentially from the other. As there was an obvious propriety in representing in the first branch, the feelings, interests, wishes, and wants of the people, a numerous delegation is sent from among the people to take care of these—and with the exclusive power to originate all bills which pertain to the raising, or using of money. The other branch, very small, comparatively, in numbers, and invested with distinct powers, and among others the important one of listening to the impeachment of the highest executive and judicial officers, was necessarily founded on some other principle ; and none was more obvious than that of *property*, since in a well balanced republic, the personal rights of the citizen are well secured, and rarely in danger ; while nine in ten, of all the laws, relate in some measure to property. The constitution was framed too at a time when the great principle of no taxation without representation was not only understood, but the country involved in a war of dreadful consequences, to maintain that principle ; and of most disastrous effects if the war should not have been successful. There was then great fitness and wisdom in apportioning that branch of the government, on the amount of taxes paid in given districts—for it not only made a distinct branch founded on a distinct basis, but that basis was the most reasonable, and proper, as it rests on security of property, which next after personal security, is the great end and object of government. There is no constitution on this continent where some such principle of distinction between the two branches has not been recognized, with two or three exceptions. The distinction is effected in one of three modes—the senators are elected for 2, 3, or 4 years—with annual rotation of a part—2d, requiring that electors should be proprietors of real estate—3d, that the members of the senate should be proprietors of real estate in a great amount, and in some of the states all these provisions are required. The proposition now is, to abolish all these distinctions at once. To elect the house and senate by the same class of electors—in nearly the same sections of the State—and to distinguish them from each other in nothing but the difference of number—and that they are not to sit in one and the same apartment. Without adverting to any political distinction in this Commonwealth—all the checks now existing have been found, in times of strong excitement, to be but a feeble barrier to those impulses to which assemblies of men, no less than individuals, are subject. And no caprice or propensity to violence and tyranny can

be affirmed of one man which are not equally applicable to assemblies of men when party feeling gives rise to passions, and silences the voice of reason. Suppose a common feeling and interest between the executive and the two branches brought into union, and acting to resist political opponents, and with the honest belief that they are doing right; how easy would it be for such a combination, arranged out of the halls of legislation, to give to their wishes the form of law—and to remove all obstacles to the exercise of power. To such a combination, nothing would be wanting but the *sword*, to exhibit the lamentable facts, which we find in the history of other republics; for such a combination would have money, and by suppressing the freedom of the press, they would control public opinion; remove all judiciary officers, and put such men in their places as would construe the laws according to the wishes of the dominant party. It is not intended to characterize any one party, but every party; it is intended to allude only to human nature, to *men* as they are. The difference between obedience to passion, as between a man and an assembly of men, acting as a government, is, that the one acts against law, and the other in the name of law. Mr. S. then went into a discussion of the principle of the senate, to show that it was not founded in the representation of the *rich*, but on the principle of the amount of taxes paid; that the wealthy individual has only his *single vote*, in common with other citizens; and that the members of the senate represent the middling and lower classes equally with the wealthy; and that wealth has no influence, merely as such, over the free will of this intelligent community, which would spurn all attempts of the wealthy to influence the right of suffrage, if such attempts were ever made. Mr. SULLIVAN said that local feelings might be supposed to have shaped his views; but he disclaimed all such influence. The deliberations of the assembly were intended to fix principles which were to operate for a long course of years; and no one would know by whom, nor upon whom, these principles were to be applied; nor would any one on this occasion conform his measures to personal, or local objects. Happily all considerations of this nature were shut out of view, and every man must be presumed to act not from personal, and unworthy motives, but from a high sense of duty, however he might differ from others. Mr. S. said he conceived that the sole object was to recommend to the people what might appear, to the Convention, to be right, and to trust to the good sense of the people at large, to decide on the merit of their recommendation.

Mr. WILDE of Newburyport said that he hoped that when the proposition under discussion was fully understood, a different decision would be made on it from that which was made by the vote of yesterday. It takes away one of the most important checks of one branch of the Legislature upon the other, and which it was extremely desirable should be retained, unless some better could be devised. It was a check designed for the greater protection of the rights of property. If we would look over the history of the world

we should find cases enough where the want of such a check has been felt. In the Roman commonwealth, propositions for an equal division of property, agitated the people from century to century. It was no answer to this argument that such a disposition does not prevail at present. That is not a perfect system which does not provide for all possible events, especially for those which the history of every free people teaches us have taken place. He would suppose a case, not improbable, which might occur to the Legislature of this State,—that the house of representatives should propose to raise all taxes on property and not on polls, or on personal property, and not on real. In such case, the senate, as now constituted, would, more naturally than the house, oppose such a proposition. If circumstances rendered it proper they might accede to it. They would have a reasonable disposition to oppose it, and nothing more. The system had been called a novel one: this was no objection, if it were true, in the mind of a wise man. If it were, all improvements would be rejected. We were the last people that ought to object to novelty. Our whole system of government is a novelty. When it was first adopted it was condemned as a solecism. But experience has proved its value. Constitutions restraining the powers of the legislature are a novelty. It had been maintained that the system was unjust,—because no man of property was entitled to more weight than one who has none. The principle was not true to its full extent. It was a principle admitted in all private corporations, that all persons who have a larger share should have a larger vote. So in the community. That portion which contributes most to the public burthens should have the greatest weight in the government. The reason why it was not carried into effect directly in regard to individuals, was because it was not practicable. But it did not on that account follow that the principle should not operate to any extent. It might be said that it would give the rich man power to oppress the poor. This was impossible. If the senate were all rich men, and disposed to be unjust, the house of representatives would have a complete check upon them. The gentleman from Worcester appeared not to have fully considered the nature of the scheme. It did not give to an individual of large property, the weight in the government of a number of individuals whose property united amounted to the same sum. He proceeded to explain the operation of the scheme as it affected the influence of individuals. He was opposed to the present resolution because it was repugnant to a number of resolutions which had been adopted, and because it would totally defeat the scheme proposed by the select committee, founded on a compromise of various interests, a part of which could not be adopted to the exclusion of the rest, without great injustice. He stated other objections to the resolution.

Mr. AUSTIN of Boston said, before we exchanged the principle on which our senate was now constituted, for the new one proposed by the gentleman from Roxbury, we should first ascertain what is the

present principle. It was not marked by those aristocratical tendencies which gentlemen had asserted. It gave no more power to the rich than to the poor, nor secured their property in a different manner: There was no analogy between our constitution and the institution of patricians and plebeians in Rome, to which that gentleman had alluded. Nor was our senate a citadel for the rich, as it had been called by his colleague (Mr. BLAKE). It was no direct representation of wealth. In some of the United States there was such a direct representation. A representation founded on taxation was a representation of the whole people, and our senators were elected on popular principles. Rich men alone might be elected if rich men alone had the privilege of voting; but that was not the case. To show that there was no danger to be apprehended from the senate as at present constituted, he spoke of the characters of the men who had heretofore been elected senators—men of integrity and patriotism—the blaze of whose genius had at times illumined the course the people were to pursue. The comparison made by the gentleman from Worcester (Mr. LINCOLN), between the house of representatives of the United States, and a senate founded on the principle of this resolution, was not a just one. In the constitution of the United States, taxation and representation go hand in hand. If Virginia sends 20 representatives and Massachusetts 10, Virginia must pay double the tax of Massachusetts. If gentlemen were willing to carry the principle through, and tax Berkshire as much as they tax Boston, then it would be fair that Berkshire should have as many senators as Boston. The same gentleman had asked, If the present principle was correct and equal, why restrict it? If Boston, from her valuation, was entitled to eight senators, why take up with six? For a very good reason,—for the sake of compromise. If extreme rights were to be insisted upon, we could form no constitution. He hoped the system reported by the select committee, which was a system of compromise, would be accepted throughout the Commonwealth. He was therefore against the present resolution.

On motion of Mr. FOSTER of Littleton, the committee rose—239 to 64—and reported their agreement to the resolutions in the second report of the select committee, and that on other subjects committed to them they had made some progress, and they asked leave to sit again, which was granted.

Mr. WOODBRIDGE of Stockbridge, on behalf of Mr. BLISS, chairman of the committee on the declaration of rights, who was absent on account of ill health, presented a report of that committee, differing in form only from their former report, which had been recommended.

The report was read and ordered to be printed.

The House adjourned.

THURSDAY, DECEMBER 14.

The House met at 9 o'clock, and attended prayers offered by the Rev. Mr. Palfrey.

The journal of yesterday was read.

The president nominated the following gentlemen to be of the committee for reducing to form the amendments which should be agreed upon, viz.: MESSRS. JACKSON of BOSTON, WILDE of Newburyport, L. LINCOLN of Worcester, HOLMES of Rochester, WOODBRIDGE of Stockbridge, J. DAVIS of Boston, NICHOLS of South Reading, DUTTON and PRESCOTT of Boston.

Mr. WEBSTER of Boston moved that the abovementioned committee should be instructed to take into consideration the time when the constitution as amended shall go into effect. Agreed to.

Mr. FREEMAN of Sandwich offered a resolution that it is expedient to make a provision in the constitution, that no able-bodied citizen between the ages of 18 and 45, shall be exempted from military duty, or some equivalent therefor; judges of the supreme court, ministers of the gospel, and quakers excepted. By a vote of 81 to 33 it was

*Ordered*, That the resolution be referred to the select committee on the fourth resolution which respects the governor, militia, &c.

*Apportionment of the Senate.*—On motion of Mr. PRESCOTT, the House went into committee of the whole on the unfinished business of yesterday, Mr. QUINCY in the chair.

The committee proceeded to the consideration of the resolution under discussion yesterday, for dividing the Commonwealth into districts for the choice of senators according to population.

Mr. ABBOT of Westford rose to explain the reasons of the vote he should give on the present question. He was not unfriendly to the rights of the people, but he could not join in the tune which had been so long sung in respect to them, the chorus of which had been swelled so loud by other gentlemen; he was not accustomed to such music. The question was, whether a representation founded on property were just or not. It appeared to him that when some men bring in more into the common stock of the community than others, they ought to have a greater voice in the government. It was so in corporations generally; the greatest contributors have a power in proportion, but with some limitations. The gentleman from Worcester (Mr. LINCOLN) had said that if the principle were just there should be no limitation. He did not conceive so. And if the principle of population were taken, there would be the same reason for a limitation; otherwise one county might increase so much as to have a majority in the senate. It was said by the gentleman from Dartmouth (Mr. SLOCUM) that taxation and representation should go hand in hand. If so, and no one would question it, then a county which pays more than another should be entitled to a greater representation. It had been stated that wealth had an influence sufficient to protect itself; he would give it an influ-

ence that should be legitimate, otherwise it would exercise an illegitimate influence. He thought there was no danger from this representation. He had learned from the writings of a venerable member of the Convention, that life and liberty and civil rights were as dear to the rich as the poor, and this would be a check upon them. Gentlemen who knew him would do him the justice to believe that he was not influenced by interested motives. He could apply to himself what an eminent man in Great Britain had said before him, "I have been compelled to study to live, not live to study." But he should vote against the present resolution, because he thought a representation of property was right.

Mr. BLAKE was most decidedly and unequivocally opposed to the proposition of the gentleman from Roxbury, because, in his judgment, it would have the effect to transform the most beautiful feature of the constitution into a mass of deformity—to introduce confusion in place of order—injustice in place of justice—and to form a new government on a plan altogether different from that which is found in our present constitution. The principle of senatorial representation had been called, unjustly, an aristocratical principle. There was no such principle in the constitution. The people only were regarded in every part of it. It was formed at a time when it would be impossible that any such principle could have been introduced into it; when there was a greater hatred of tyranny and unequal privileges than at any other, and by men most attached to true republican principles. It was a truly republican constitution, and for that reason he liked it. He had been a republican in the most gloomy times; it was fashionable to be a republican now, and he should not be disposed to desert republicanism at such a time. He considered the constitution of this Commonwealth the purest and most perfect model of republican government that ever existed on the face of the globe. There cannot be found in any state, or in the world, a constitution so free and liberal as that of Massachusetts, which we now have, independent of any amendments which may be proposed. He said that he had used the other day, a very improper figure, when he called the senate the rich man's citadel. It was no more the citadel of the rich than of the poor man. It was the only branch of the government which was particularly designed for the protection of property; and this protection was as important for those who have little as for those who have much. He proceeded to take a view of the constitution as a mutual contract, by which those men who contributed most ought to have the greatest influence. He replied to some of the arguments of the gentleman from Worcester (Mr. LINCOLN) yesterday. Mr. L. admitted that there ought to be a connection between representation and taxation, but that the principle did not require that there should be any proportion between them. Upon this principle all that was required of the towns of Hull and Boston was, that each should have one representative. It was absurd to contend that the principle was adhered to, unless there was some proportion

between their respective taxes and representation. In reply to a remark in relation to the revolution, Mr. B. said that he was in an error in regard to the history of those times, if one representative in the British Parliament would have satisfied the people of this country. The gentleman had argued that government was founded on intelligence, and not on property. Mr. B. had thought that something further was necessary,—that virtue and morality were necessary; and besides, with all the intelligence, wisdom, and virtue in the universe, government could not be supported without money. The gentleman had complained that the property of an individual in the county of Berkshire had not the same influence as the same amount of property in Suffolk. This was not correct in point of fact. Any amount of property in Berkshire, or any other county, counts dollar for dollar for the like amount in Suffolk—and this operation of the principle makes the system equal.

Mr. SALTONSTALL of Salem observed that this Convention exhibited a singular and most interesting scene. A free people by their delegates assembled to deliberate upon the constitution under which they have so long lived, inquiring into its operations, and whether there is any evil that requires amendment. It is a subject of gratitude that while the nations of the old world are obliged to submit to reforms, dictated by standing armies, we are witnessing this quiet scene. But there is also much cause of anxiety. A short time since we were all happy under the present constitution. There was no symptom of uneasiness, no project for a convention. Our government secured to us all the objects for which civil society was instituted. The separation of a part of the Commonwealth, rendered it expedient to propose to the people the question of a convention, and it was adopted by a very small vote,—a fact which shows conclusively that no evil was pressing on the people; that no grievance loudly demanded a remedy. But now, amidst constant professions of veneration for the instrument, every part of it is attacked, and we are called on to defend the elementary principles of government. First, we abolish one session of the Legislature, which has existed for two centuries; we then dispense with the necessity of a declaration which has existed from the beginning; we disown that the people ever enjoyed their rights in the election of counselors. And now the foundation of a great branch of the government is attacked, as unjust and aristocratic. Is the constitution to be thrown by as an old-fashioned piece of furniture, that answered well enough in its day, but is now fit only to be stowed away in the lumber room with the portraits of our ancestors? Let us rather meet the objections, listen to the arguments, correct the evil, if one is shown to exist, and the constitution will come out of the fiery furnace unhurt, still more precious for the trial it has endured. Mr. S. then observed that he had not expected a serious attempt would be made to change the basis of the senate; that it had not been a cause of dissatisfaction; that nothing had been written or said against it until the separation of Maine; that there was occasionally

some difficulty as to the fractions, and some irritation in the formation of districts, but no serious disaffection; and he believed no objection was ever made to it in the Legislature, as unjust or unequal. He had thought also that the constitution was endeared to the people from the circumstances under which it was made,—in the midst of war; our independence not yet secure; while our armies were yet in the field. At such a time the convention met, and deliberately discussed the great principles of government, and framed the present system of government. There were circumstances also calculated especially to endear this part of the constitution to us. When the convention assembled, a majority were opposed to two branches; they thought the people needed no check: like the gentleman from Worcester, they thought the people were capable of self-government. Its analogy to the old council had also a tendency to render it odious; it also savored a little of aristocracy, and the leaders of that day had been irritated under the influence of the old government; yet they listened to the sages who were with them, and adopted the principle. The present basis of the senate is perfectly defensible in theory. Some check on the popular branch is necessary; this is admitted by all. Mr. S. then referred to history,—the English parliament,—to the national assembly, &c., to show its necessity. There are times when popular ferments are excited, that would destroy everything fair and valuable in society, if unchecked. Mr. S. then remarked on the different systems proposed. That by Mr. DEARBORN would be no check. Both branches will be chosen by the same people in the same districts. Both would be subject to the same influence; be under the same control; and the senate would have no more operation as a check, than the same men in the other branch. Another proposition is the novel, the fanciful, the fallacious one by the gentleman from Worcester, which would have the senate the popular branch, to be checked by the house! A popular branch of thirty-six to be checked by three hundred and fifty! But what is to check the house? That will be the popular branch, emanating from the people, warmed with all their passions. What are these corporate rights? There is nothing tangible in them, which can form a check. Mr. S. then went on to show that there was no analogy between this plan and the constitution of the United States, as had been argued by Mr. LINCOLN. He thought the people would never adopt a system of checks, by making different tenures to office, or different qualifications to voters. What then remains but to preserve the present basis; to cling to that which has been so wise in theory, and so salutary in practice? It is an admirable provision,—the representation of a great interest, and yet not dangerous to any other. It is the result of a new modification which will give a spirit of independence to the senate, and make them indeed a check—not to thwart the other branch, but to watch, to cause deliberation. Property should be represented, because it is the greatest object of civil society; it is not mere inert matter, but a living prin-



ciple, which keeps the great machine of society in motion. It is the universal stimulus. The principle of the senate is not unequal in its operation, but the same everywhere, in all places; not for Suffolk or Essex—Essex has nothing to gain, but may lose much, by this arrangement. It is not for the rich, but for the security of all men and all interests, as it will make an effectual check for the preservation of every right. If in theory this is wise, how much more valuable is it after forty years' experience. Experiment is worth everything upon this subject. We should be unwilling to touch what is made venerable by age. We should cautiously advance any theory of our own, against a system that has been in operation half a century. The situation of Massachusetts is a proud one. She has braved the storm which has overwhelmed so many old governments. They that laughed us to scorn are now looking to us with admiration, and studying our systems. Mr. S. then referred to the difficulties in the committee,—said he thought there ought not to be any limitation in the principle of the senate, so much was given up in the other branch,—that in theory there was nothing dangerous in this principle, but that they did not come there to make a constitution on strict theories, but to inquire what was the best that was practicable. He also observed upon the plan of Mr. LINCOLN, and pointed out its extreme inequality upon the different parts of the Commonwealth.

Mr. LOCKE of Billerica said it would seem like presumption in him, after the eloquence and ingenuity with which the subject had been treated, to attempt to add anything to the force of the argument. He rose rather in deference to the wishes of some of his friends, than from his own inclination. If he had any prepossessions when he came into the Convention, they were in favor of adopting the principle of population, as the basis of apportionment for the senate. It at first seemed from an indistinct view, somewhat unequal, that the more wealthy parts of the Commonwealth should have a greater representation in proportion to the number of inhabitants, than the other parts. But further examination had satisfied his mind fully, that the present system was not only best in theory, but has decided advantages in its practical operation. Alluding to the remarks of the gentleman from Roxbury, he said, he professed to have very little of that gentleman's learning—his reading had not been extensive, but what he had read, had left a very distinct impression on his mind, that the constitution of this Commonwealth had extracted from the various forms of government, that had been in operation in other countries, all that was thought to be useful. There was retained in the executive department something of the monarchical form;—in the senate the advantages of the aristocratic, without its objections, and in the house of representatives more of the democratic principle. He argued that on the scheme of the gentleman from Roxbury, the advantages of a check of one branch upon another of the Legislature, the grand object of two branches, could not be attained. He proceeded to state

the difficulties and embarrassments which the select committee had been obliged to contend with, in fixing upon any system of reduction for the house of representatives, which should be satisfactory to themselves, and which should be acceptable to the people, and the principle on which they had proceeded in adopting a system, which, while it took from the small towns the right of being annually represented, reserved to them an equivalent advantage. There would be no equality in proposing a system which should preserve to the smallest town its right to a representative, while it gave to a town of twenty-four hundred inhabitants no more, and to Boston only one for four thousand inhabitants. He did not believe that the gentleman from Worcester, could have considered the plan proposed by him, in its operations upon the large towns; for, with his moral sense of justice, he would not have proposed a plan of such inequality.

Mr. LINCOLN rose to explain. He thought it disengenuous in gentlemen, to allude to a proposition which he had made, without any connection with any other. This question should depend on its own merits, and the Convention may reject or adopt the proposition which he had presented. He did not contend that it was just and equal in itself, but in connection with the representation in the senate, on the basis of valuation, it would form an effectual, and the only effectual check.

Mr. LOCKE proceeded to compare the three systems of representation which had been proposed, and to argue in favor of the adoption of that reported by the committee. He said he understood, that some gentlemen approved of the plan proposed by the gentleman from Roxbury, for the senate, and that they thought it fair to couple it with the house of representatives, proposed in the system of the select committee. To him it appeared manifestly unjust to take this part of the system, without at the same time adopting the part relating to the senate. He observed, that some went on the principle, that the senate was founded on the basis of property. This was not true. The basis was taxation. The wealthy districts were allowed a greater proportion of representation in the senate, not with a view to the protection of property, but because they were made to contribute so much to the support of the public burdens. He concluded by giving his testimony to the fairness and liberality of the members of the committee from the large towns, and their readiness to yield everything that could be demanded in the spirit of fair and equal compromise.

Mr. ADAMS of Quincy. I rise, with fear and trembling, to say a few words on this question. It is now forty years since I have intermingled in debate in any public assembly. My memory and strength of utterance fail me, so that it is utterly impossible for me to discuss the subject on the broad ground, on which gentlemen, who have spoken before me, have considered it. The constitution declares, that all men are born free and equal. But how are they born free and equal? Has the child of a North American Indian,

that as he who goes up to the temple must go prepared to offer sacrifice, it was proper for him, in this case, to give up some portion of his private opinions, on the altar of compromise. He had looked to the operation of the different systems, and on examination, had found one of them at least, so marked with inequality and injustice, that no ingenuity could adjust, no ingenuity could apologize for it. The Convention had voted unanimously, early in the session, that it was not expedient to change the system of taxation which had always been pursued in this Commonwealth. To retain this system, and to come to the county of Suffolk and demand one fifth of the taxes of the Commonwealth, and to deprive it of its proportion of representation in the senate, was a measure marked with so much inequality, that as strong as his desire was to introduce an apportionment on population, he considered it as an impossibility. Instead of thirty-six, however, he should prefer returning to the original number of forty senators, distributing the four additional ones among the counties in the interior. With this amendment, together with a small alteration in relation to the house of representatives, he should be satisfied with the report of the committee. In order that they might proceed with that report, he felt compelled to vote against the proposition before the committee.

Mr. PRESCOTT said he had been greatly surprised by the vote passed two days ago on this proposition, and he could only account for it on the supposition that the subject was not fully understood. It had been permitted to pass to a vote without full discussion, under the impression that the whole report of the committee, the greater part of which had been adopted without opposition, would go together. The Convention had assembled to amend the constitution, not to form a new one. The select committee in the performance of their duty, had confined themselves strictly to this object. They proposed only such alterations as a change of circumstances had rendered necessary. But was the proposition on the table offered in the spirit of amendment? Did it not go to change the fundamental principles of the constitution? Who could predict the consequences of changing the basis on which one of the departments of the government was founded—a system of representation founded on equal justice—on equal rights—and on that spirit of compromise on which alone government can be founded, and by which alone defects can be amended. In every frame of government the rights of property as well as personal rights are provided for. Persons possessing property, enjoying the fruits of successful industry, together with those who possess nothing, enter into a compact to secure their rights both of property and of person. How is this compact to be formed, so that every one may be secure in his rights? Those who have property surrender up as much their personal rights as those who have none—they surrender also the control of their property, and they should, in consequence, have a proportion of influence in the government equivalent to the rights they give up. Unless they have in some way a voice in the government by reason of their

property, they receive no equivalent for the rights which they surrender; and no security for that protection of property which is at the foundation of government, and without which civilization would go back. The system adopted by our constitution, though perhaps not the most perfect in theory, is most congenial to the habits of the people, otherwise it would not have been adopted and so long approved. It was not congenial to the habits of the people to demand a higher qualification for electors for one branch of the Legislature than for the other—nor a higher qualification of property in the persons elected. It was preferred to establish one branch of the Legislature on the principle of a just proportion between taxation and representation. Is it unjust or unreasonable that the class of citizens who pay the greatest proportion of taxes wherever they may be, shall be represented in one branch of the government in some proportion to the taxes which they pay? It is not that rich men shall carry more votes to the poll, have more power or a greater right to office; but it is, that the number of senators coming from large districts and chosen by the poor as well as the rich of those districts, shall be in proportion to the amount of taxes paid by the districts. It is not for the benefit of a few rich men that this provision is made, but for men of moderate property and for all men who have property. The very rich, when their property becomes insecure, may leave the country and carry their property with them. It is not so with men of moderate property. They must stay by their country and protect its rights. But there was another principle which rendered this provision important—the necessity of rendering one branch different from the other, that they might mutually check each other. He proceeded to illustrate the nature and effect of this principle at some length, and to enforce it, by the examples found in the constitution of the United States, and in those of nearly all the states in the Union. He inquired what were the propositions now before the Convention. One to introduce universal suffrage; one to abolish all pecuniary qualification for office, and one to district the State for both branches of the Legislature upon a new principle, and in a manner which should deprive them of the power of being a check upon one another. He begged gentlemen to pause and consider whether this were the true work of amendment. The proposition of the committee for organizing the house of representatives, must be considered in connection with that before the House, relating to the senate, and it was proper to consider also the various propositions which had been made for arranging the representation in both houses. It had been well observed by the gentleman from Worcester, that it was incumbent on any gentleman offering a proposition for amendment, to show that it was better than the provision of the present constitution, and better than any other that should be proposed. It was, therefore, incumbent on the gentleman from Roxbury to show that his plan is better than that of the present constitution—better than that of the select committee—and better than any other that has been suggested. What was this proposition?

If examined it would be found wholly impracticable. The State was to be divided into thirty-five equal districts of about 13,000 inhabitants each, for the choice of both senators and representatives. Mr. P. appealed to gentlemen from Berkshire, from Essex, from Bristol, or from any other part of the State, to say in what manner these districts should be formed within their own neighborhoods. He appealed to them if it was not manifest from a moment's reflection that these districts could not be formed in a satisfactory manner. He alluded again to the objection that on this system one branch would have no check upon the other. This system was formed something upon the model of the constitution of Virginia. That state is formed into twenty-four districts for the choice of members of both branches of the legislature. He quoted from a high authority, Mr. Jefferson in his Notes on Virginia, a censure on this system, and at the same time a eulogy on that of our own constitution. "The senate by its constitution is too homogeneous with the house of delegates. Being chosen by the same electors, at the same time, and out of the same subjects, the choice falls of course on men of the same description. The purpose of establishing different houses of legislation is to introduce the influence of different interests or different principles." "In some of the American states, the delegates and senators are so chosen as that the first represent the persons, and the second the property of the State. But with us, wealth and wisdom have equal chance for admission into both houses. We do not therefore derive from the separation of our Legislature into two houses, those benefits which a proper complication of principles is capable of producing, and those which alone can compensate the evils which may be produced by their dissensions." But the precise system which this distinguished statesman, speaking of the constitution of his own state, condemns, the gentleman from Roxbury would introduce into this Commonwealth in exchange for one adapted to the habits of our people, which was approved by the framers of our constitution, and after the experience of forty years, has been found to be attended with no inconveniences, and in particular instances to have possessed positive advantages. He proceeded to examine the proposition of Mr. LINCOLN. He understood that gentleman to admit that a check of one branch upon the other was essential to the preservation of a free government, and that because the proposition of the gentleman from Roxbury did not provide this check, he did not approve his whole plan. He would provide the check in the other house—would choose senators in large districts, and the representatives by towns. This proposition came in the garb of one founded on equal rights. The present senators were to be displaced and others introduced on the proportion of population. But what principle did he propose for the other house? It was hardly possible to conceive one that should be more unequal. Every town, however small, was to have one representative—towns of 3,000 inhabitants to have two—and of 6,500 to have three. The whole number amounting to 334. This plan was so grossly unequal,

that certain towns containing half the population of the Commonwealth, would choose three fourths of the representatives. 169 small towns, containing 153,000 inhabitants, less than a third of the whole State, would choose 169 representatives, a majority of the whole house. Thus the liberties of the majority would be put in subjection to the minority, in violation of the fundamental principle of every free government. The laws would be made by the representatives of a minority of the people. It was the principle of every free government that the majority should rule. Where the laws are made by the minority, whether that minority is one or a hundred, it is tyranny, and the laws so made are not to be executed. Whether it is the senate of Rome or the emperor of France with his great officers of state, or a privileged number among the people, it ceases to be a free government. Adopt this system, and this will be its operation. Call it by what name you will, our rights are gone, not for this day only, but for our children after us. By this system, it is proposed that 6,000 inhabitants shall be required to give an additional representative, while the representatives in a majority of the towns are to be on an average one for every 820 inhabitants. He examined also the scheme proposed by the gentleman from Northampton. This although liable to fewer objections than the other, he thought could not be admitted, because it would disturb the ancient rights and usages of the Commonwealth. He proceeded to examine in detail the plan of the committee. He pointed out many of its features which ought to reconcile it particularly to the small towns, and showed that it presented by far the fewest advantages to the large towns. One important feature of the system was, that the representatives were to be paid out of the public chest. This the public never would have consented to, and never ought to consent to, unless the number of representatives was reduced. This system presents to the small towns the advantages of having a representative every other year, to be paid out of the public treasury, instead of a right to choose a representative every year, with an influence diminished in proportion to the numbers of the house, and with the burden of paying him themselves. The town of Boston will send thirteen and pay for sixty. If necessary to make this system more acceptable to the small towns, he was willing to propose an amendment, that on the year of a general valuation, which recurs once in ten years, all towns should be represented and paid out of the public treasury.

Mr. STORY. We are at length arrived at the discussion of those questions, which it was easy to foresee would be attended with the most serious interest and difficulty—questions which, indeed, were the principal causes of assembling this Convention. Nor do I regret it. The great powers of eloquence and argumentation which have already been displayed in the debate, I trust will do good here, and ultimately reach the homes of our constituents. I cannot hope, after the very ample discussion which the subject has undergone, to add much to the arguments, and shall content myself with such illustrations of my views as have not been completely presented by others.

If it were necessary for my purpose, I might say, with the gentleman from Worcester, that I come here pledged to no man or set of men, or to any settled course of measures. I come merely as the delegate of one town to co-operate with other gentlemen, the delegates of other towns, in such measures as the public good may require, and in their wisdom and discretion I place entire confidence. I might add also what my eloquent colleague has already remarked, that upon this particular topic and upon the grounds which we take, we are not in a situation even to be suspected of interested motives. The county of Essex is safe at present, and would have a fair and equal representation in the senate, whether the principle of population or valuation were adopted as a basis. But if population were assumed as a basis, and no restriction were interposed, it is highly probable that the county of Essex might hereafter be a loser; but upon the principle of valuation it could never be a gainer, since it would now have the whole number to which it could ever be entitled. But I throw away all narrow considerations of this kind, and consider myself as a delegate of the Commonwealth bound to consult for the interests of the whole—and to form such a constitution as shall best promote the interest of our children and all posterity.

It is necessary for us for a moment to look at what is the true state of the question now before us. The proposition of my friend from Roxbury, is to make population the basis for apportioning the senate, and this proposition is to be followed up,—as the gentleman, with the candor and frankness which has always marked his character, has intimated—with another, to apportion the house of representatives in the same manner. The plan is certainly entitled to the praise of consistency and uniformity. It does not assume in one house a principle which it deserts in another. Those who contend on the other hand, for the basis of valuation, propose nothing new, but stand upon the letter and spirit of the present constitution.

Here then there is no attempt to introduce a new principle in favor of wealth into the constitution. There is no attempt to discriminate between the poor and the rich. There is no attempt to raise the pecuniary qualifications of the electors or elected—to give to the rich man two votes and to the poor man but one. The qualifications are to remain as before, and the rich and the poor, and the high and the low are to meet at the polls upon the same level of equality. And yet much has been introduced into the debate about the rights of the rich and the poor, and the oppression of the one by the elevation of the other. This distinction between the rich and poor, I must be permitted to say, is an odious distinction, and not founded in the merits of the case before us. I agree that the poor man is not to be deprived of his rights any more than the rich man, nor have I as yet heard of any proposition to that effect; and if it should come, I should feel myself bound to resist it. The poor man ought to be protected in his rights, not merely of life and liberty, but of his scanty and hard earnings. I do not deny that the

poor man may possess as much patriotism as the rich ; but it is unjust to suppose that he necessarily possesses more. Patriotism and poverty do not necessarily march hand in hand ; nor is wealth that monster which some imaginations have depicted, with a heart of adamant and a sceptre of iron, surrounded with scorpions stinging every one within its reach, and planting its feet of oppression upon the needy and the dependent. Such a representation is not just with reference to our country. There is no class of very rich men in this happy land, whose wealth is fenced in by hereditary titles, by entails, and by permanent elevation to the highest offices. Here there is a gradation of property from the highest to the lowest, and all feel an equal interest in its preservation. If, upon the principle of valuation, the rich man in a district, which pays a high tax, votes for a larger number of senators, the poor man in the same district enjoys the same distinction. There is not then a conflict, but a harmony of interests between them ; nor under the present constitution has any discontent or grievance been seriously felt from this source.

When I look around and consider the blessings which property bestows, I cannot persuade myself that gentlemen are serious in their views, that it does not deserve our utmost protection. I do not here speak of your opulent and munificent citizens, whose wealth has spread itself into a thousand channels of charity and public benevolence. I speak not of those who rear temples to the service of the most high God. I speak not of those who build your hospitals, where want, and misery, and sickness, the lame, the halt and the blind, the afflicted in body and in spirit, may find a refuge from their evils, and the voice of solace and consolation, administering food and medicine and kindness. I speak not of those, who build asylums for the insane, for the ruins of noble minds, for the broken hearted and the melancholy, for those whom Providence has afflicted with the greatest of calamities, the loss of reason, and too often the loss of happiness—within whose walls the screams of the maniac may die away in peace, and the sighs of the wretched be soothed into tranquillity. I speak not of these, not because they are not worthy of all praise ; but because I would dwell rather on those general blessings, which prosperity diffuses through the whole mass of the community. Who is there that has not a friend or relative in distress, looking up to him for assistance ? Who is there that is not called upon to administer to the sick and the suffering, to those who are in the depth of poverty and distress, to those of his own household, or to the stranger beside the gate ? The circle of kindness commences with the humblest, and extends wider and wider as we rise to the highest in society, each person administering in his own way to the wants of those around him. It is thus that property becomes the source of comforts of every kind, and dispenses its blessings in every form. In this way it conduces to the public good by promoting private happiness ; and every man from the humblest, possessing property, to the highest in the State, con-



tributes his proportion to the general mass of comfort. The man without any property may desire to do the same ; but he is necessarily shut out from this most interesting charity. It is in this view that I consider property as the source of all the comforts and advantages we enjoy, and every man, from him who possesses but a single dollar up to him who possesses the greatest fortune, is equally interested in its security and its preservation. Government indeed stands on a combination of interests and circumstances. It must always be a question of the highest moment, how the property-holding part of the community may be sustained against the inroads of poverty and vice. Poverty leads to temptation, and temptation often leads to vice, and vice to military despotism. The rights of man are never heard in a despot's palace. The very rich man, whose estate consists in personal property, may escape from such evils by flying for refuge to some foreign land. But the hardy yeoman, the owner of a few acres of the soil, and supported by it, cannot leave his home without becoming a wanderer on the face of the earth. In the preservation of property and virtue, he has, therefore, the deepest and most permanent interest.

Gentlemen have argued as if personal rights only were the proper objects of government. But what, I would ask, is life worth, if a man cannot eat in security the bread earned by his own industry ? If he is not permitted to transmit to his children the little inheritance which his affection has destined for their use ? What enables us to diffuse education among all the classes of society, but property ? Are not our public schools, the distinguishing blessing of our land, sustained by its patronage ? I will say no more about the rich and the poor. There is no parallel to be run between them, founded on permanent constitutional distinctions. The rich help the poor, and the poor in turn administer to the rich. In our country, the highest man is not *above* the people ; the humblest is not *below* the people. If the rich may be said to have additional protection, they have not additional power. Nor does wealth here form a permanent distinction of families. Those who are wealthy today pass to the tomb, and their children divide their estates. Property thus is divided quite as fast as it accumulates. No family can, without its own exertions, stand erect for a long time under our statute of descents and distributions, the only true and legitimate agrarian law. It silently and quietly dissolves the mass heaped up by the toil and diligence of a long life of enterprise and industry. Property is continually changing like the waves of the sea. One wave rises and is soon swallowed up in the vast abyss and seen no more. Another rises, and having reached its destined limits, falls gently away, and is succeeded by yet another, which, in its turn, breaks and dies away silently on the shore. The richest man among us may be brought down to the humblest level ; and the child with scarcely clothes to cover his nakedness, may rise to the highest office in our government. And the poor man, while he rocks his infant on his knees, may justly indulge the consolation, that if he possess talents and

virtue, there is no office beyond the reach of his honorable ambition. It is a mistaken theory, that government is founded for one object only. It is organized for the protection of life, liberty and property, and all the comforts of society—to enable us to indulge in our domestic affections, and quietly to enjoy our homes and our firesides.

It has been said, that the senate, under the present constitution, is founded on the basis of property. This I take to be incorrect. It is founded on the basis of taxation. It gives no particular privileges to the rich; all have equal rights secured by it. The gentleman from Worcester, to show the injustice and inequality of the present system, has alarmed us with a reference to the town of Hull. Suppose, said he, five of the richest men in Boston should remove to Hull—that removal would enable Hull to have *six* senators. Is this the case? Is Hull a county? Does it constitute a senatorial district? No; the property thus carried from Suffolk, would be transferred to the county of Plymouth, and would increase the representation of that county proportionally in the senate under a new valuation. If instead of going to Hull the same persons should remove to Salem, their property would not produce the slightest effect, for Essex, without it, possesses a right to as many senators as the constitution allows to any district. The case supposed by the gentleman is so extreme, that it could scarcely be supposed to exist; and if it did, no such consequences could arise as have been stated.

It has been also suggested, that great property, of itself, gives great influence, and that it is unnecessary that the constitution should secure to it more. I have already stated what I conceive to be the true answer; that a representation in the senate founded on valuation, is not a representation of property in the abstract. It gives no greater power in any district to the rich than to the poor. The poor voters in Suffolk may, if they please, elect six senators into the senate; and so throughout the Commonwealth, the senators of every other district may, in like manner, be chosen by the same class of voters. The basis of valuation was undoubtedly adopted by the framers of our constitution, with reference to a just system of checks and balances, and the principles of rational liberty. Representation and taxation was the doctrine of those days—a doctrine for which our fathers fought and bled, in the battles of the revolution. Upon the basis of valuation, property is not directly represented; but property in the aggregate, combined with personal rights—where the greatest burthen of taxation falls, there the largest representation is apportioned; but still the choice depends upon the will of the majority of voters, and not upon that of the wealthier class within the district. There is a peculiar beauty in our system of taxation and equalizing the public burthens. Our governor, counsellors, senators, judges, and other public officers are paid out of the public treasury,—our representatives by their respective towns. The former are officers for the benefit of the whole Commonwealth;

but the right of sending representatives is a privilege granted to corporations, and, as the more immediate agents of such corporations, they are paid by them. The travel however of the representatives is paid out of the public treasury, with the view that no unjust advantage should arise to any part of the Commonwealth from its greater proximity to the capital. Thus the principle of equalizing burthens is exemplified. But even if it were true that the representation in the senate were founded on property, I would respectfully ask gentlemen, if its natural influence would be weakened or destroyed by assuming the basis of population. I presume not. It would still be left to exert that influence over friends and dependents in the same manner that it now does; so that the change would not in the slightest degree aid the asserted object, I mean the suppression of the supposed predominating authority of wealth.

Gentlemen have argued, as though it was universally conceded as a political axiom, that population is in all cases and under all circumstances the safest and best basis of representation. I beg leave to doubt the proposition. Cases may be easily supposed, in which, from the peculiar state of society, such a basis would be universally deemed unsafe and injurious. Take a state where the population is such as that of Manchester in England, (and some states in our Union have not so large a population) where there are five or ten thousand wealthy persons, and ninety or one hundred thousand of artizans reduced to a state of vice and poverty and wretchedness, which leave them exposed to the most dangerous political excitements. I speak of them, not as I know, but as the language of British statesmen and parliamentary proceedings exhibit them. Who would found a representation on such a population, unless he intended all property should be a booty to be divided among plunderers? A different state of things exists in our happy Commonwealth, and no such dangers will here arise from assuming population as the basis of representation. But still the doctrine, in the latitude now contended for, is not well founded. What should be the basis on which representation should be founded, is not an abstract theoretical question, but depends upon the habits, manners, character and institutions of the people, who are to be represented. It is a question of political policy, which every nation must decide for itself, with reference to its own wants and circumstances.

The gentleman from Worcester has asserted that intelligence is the foundation of government. Are not virtue and morality equally so? Intelligence without virtue is the enemy most to be dreaded by every government. It might make men despots, or bandits, or murderers, if their interests pointed in such directions. While therefore it may be admitted that intelligence is necessary for a free people, it is not less true that sound morals and religion are also necessary. Where there is not private virtue, there cannot be public security and happiness.

The proposition of the gentleman from Roxbury is to assume population for the basis of both houses. That of the gentleman

from Worcester is to assume population for the senate and corporate representation for the house. The latter gentleman wishes his last proposition to be considered distinctly from the first. It might suit the purposes of the gentleman's argument so to separate them; but in the nature of things, with reference to the doctrine of checks and balances, avowed and supported by the gentleman himself, they are inseparable. I feel myself constrained so to consider them, as parts of a system, the value of which must be ascertained by examining the effects of the whole combination. I am not opposed in principle to population as a basis of representation. There is much to recommend it. It has simplicity and uniformity and exemption from fraud in its application; circumstances of vast importance in every practical system of government. In the select committee, I was in favor of a plan of representation in the house founded on population, as the most just and equal in its operation. I still retain that opinion. There were serious objections against this system, and it was believed by others that the towns could not be brought to consent to yield up the corporate privileges of representation, which had been enjoyed so long, and were so intimately connected with their pride and their interests. I felt constrained therefore with great reluctance to yield up a favorite plan. I have lived long enough to know that in any question of government, something is to be yielded up on all sides. Conciliation and compromise lie at the origin of every free government; and the question never was and never can be, what is absolutely best, but what is relatively wise, just and expedient. I have not hesitated therefore to support the plan of the select committee as one that, on the whole, was the best that, under existing circumstances, could be obtained.

To the plan of the gentleman from Roxbury two objections existed: The first was, that it destroyed the system of checks and balances in the government, a system which has been approved by the wisdom of ages. The value of this system has been forcibly illustrated by the gentleman from Boston, in the extract which he read from the remarks of Mr. Jefferson on the constitution of Virginia. I will not therefore dwell on this objection. The next objection is that it destroys all county lines and distinctions, and breaks all habits and associations connected with them. They might thus be broken up, but it was by tearing asunder some of the strongest bonds of society. The people of each county are drawn together by their necessary attendance upon the county courts, and by their county interests and associations. There is a common feeling diffused among the mass of the population, which extends to, but never passes the boundary of each county; and thus these communities become minor states. These are valuable associations, and I am not prepared to say that they ought to be given up altogether. The system of the gentleman from Roxbury, however, not only obliterates them, but at the same time is supposed to affect the interests and corporate representation of the towns—a representation which, with all its inconveniences, possesses intrinsic value. It appears to

me that the system of the select committee, combining valuation as the basis of the senate with corporate representation of the towns as the basis of the house, has, both as a system of checks and balances, and convenient and practical distribution of powers, some advantages over that now under discussion.

It has been said that the system of valuation is novel, and cannot be traced beyond the era of the formation of our present constitution. It may be so; though the venerable gentleman from Quincy has endeavored to show that it is in principle as old as the republics of Greece and Rome. But be it novel; it is no objection to it. Our whole system of government is novel. It is a great experiment in the science of politics. The very principle of representation and the theory of a division of powers is of modern origin, as are many of our dearest and most valuable institutions.

It is asked too, why, if the principle of valuation be a just one, there is a restriction that no district shall send more than six senators. A sufficient reason has been already given—that it was a compromise to silence any jealousy of an undue exercise of power by any particular district abounding in wealth. My answer is, that it is also for the purpose of equalizing the fractions of the smaller districts with the great districts. The same principle of equalization had been provided in forming the house of representatives, and was now more completely observed in the system of the select committee.

After all, what will be the effect of changing the basis of the senate from valuation to that of population? It will take three senators from Suffolk, give two more senators to the old county of Hampshire, leaving Berkshire and Plymouth to struggle for one more, and Norfolk and Bristol to contend for another, the disposition of which may be doubtful. All the rest of the Commonwealth will remain precisely in the same situation, whether we adopt the one basis or the other. Yet even this change will not produce any serious practical result, if we look forward twenty years. Suffolk has increased within the last ten years, ten thousand in the number of its inhabitants, that is to say, one quarter part of its population; a much greater ratio of increase than the rest of the State. Population will probably from the like causes continue to increase on the seaboard, or at least in the capital, from its great attractions, in a ratio quite as great beyond that of the interior. So that in a short time the difference of the two systems will be greatly diminished, and perhaps finally the inland counties will gain more by the restriction of the districts to six senators than they will now gain by the basis of population. In fifty years Suffolk upon this basis may entitle itself not to six only, but to eight.

Now I would beg gentlemen to consider, if in this view of the subject a change in the basis of the senate can be useful? The constitution has gone through a trial of forty years in times of great difficulty and danger. It has passed through the embarrassments of the revolutionary war, through the troubles and discontents of 1787

and 1788, through collisions of parties unexampled in our history for violence and zeal, through a second war marked with no ordinary scenes of division and danger, and it has come out of these trials pure and bright and spotless. No practical inconvenience has been felt or attempted to be pointed out by any gentleman in the present system, during this long period. Is it then wise, or just, or politic to exchange the results of our own experience for any theory, however plausible, that stands opposed to that experience, for a theory that *possibly* may do as well?

A few words as to the proposition of the gentleman from Worcester for representation in the house. It seems to me—I hope the gentleman will pardon the expression—inconsistent not only with his own doctrine as to the basis of population, but inconsistent with the reasoning, by which he endeavored to sustain that doctrine. The gentleman considers population as the only just basis of representation in the senate. Why then, I ask, is it not as just as the basis for the house? Here the gentleman deserts his favorite principle, and insists on representation of towns as corporations. He alleges that in this way the system of checks and balances, (which the gentlemen approves) is supported. But it seems to me that it has not any merit as a check; for the aggregate population of the county will express generally the same voice as the aggregate representatives of the towns. The gentleman has said that the poor man in Berkshire votes only for two senators, while the poor man in Suffolk votes for six. Is there not the same objection against the system of representation now existing as to the house, and against that proposed by the gentleman himself? A voter in Chelsea now votes for but one representative, while his neighbor, a voter in Charlestown, votes for six. Upon the gentleman's own plan there would be a like inequality. He presses us also in reference to his plan of representation in the house, with the argument, that it is not unequal because we are represented, if we have a single representative; and he says he distinguishes between the right to send one and to send many representatives. The former is vital to a free government—the latter not. One representative in the British Parliament would have probably prevented the American revolution. Be it so. But if the doctrine be sound, does it not plainly apply as well to the senate as the house? If it be not unequal or unjust in the house, how can it be so in the senate? Is not Berkshire with its two senators, and Barnstable with its one senator, and Worcester with its four senators, upon this principle just as fully represented in the senate as Suffolk with its six senators? The argument of the gentleman may therefore be thrown back upon himself.

The gentleman from Worcester has illustrated his views by a reference to the structure of the two houses under the constitution of the United States; and he conceives the senate of the United States as analogous to his system of representation in our house—a representation of corporations. It certainly bears no analogy to his

basis of representation for the senate. I take it that the senate of the United States is a representation of sovereignties, co-ordinate and coequal, and in no respect like our system either of the house or senate; for neither towns nor districts have an *equal* representation there, for the reason that they are not independent sovereignties. But when we come to the house of representatives of the United States, which is founded on the basis of population, we find that it is accompanied with another principle, that *representation* and *direct taxation* shall be apportioned according to population. Not that population *alone* shall be the basis; but that they who enjoy the right shall also bear the burthen. I have no objection to adopting this principle here. Let Worcester send her six senators, and Berkshire three; and let them consent also to bear a proportionable share of the public taxes; and then, and then only, will there be a well founded analogy to the constitution of the United States. I thank the gentleman for his illustration—an argument more pertinent for my purpose could not have been found.

I beg however for a moment to ask the attention of the committee to the gross inequalities of the plan of the gentleman from Worcester respecting the house of representatives. There are 298 towns in the State, each of which is to send one representative. And upon this plan the whole number of representatives will be 334. There are but 24 towns, which would be entitled to send more than one representative. These 24 towns with a population of 146,000 would send 58 representatives, or only one upon an average for every 2526 inhabitants, while the remaining 274 towns with a population of 313,000 would send 274 representatives, or one for every 1144 inhabitants. I lay not the *venue* here or there in the Commonwealth, in the county of Worcester or the county of Essex; but such would be the result throughout the whole Commonwealth taken in the aggregate of its population. Salem would send one representative for every 3130 inhabitants and Boston one for every 4200 inhabitants, while every town but the 24 largest would send one for every 1144 inhabitants! What then becomes of the favorite doctrine of the basis of population? I would ask the gentleman in his own emphatic language, is not this system unjust, unequal and cruel? If it be equal, it is so by some political arithmetic, which I have never learned and am incapable of comprehending.

A few words upon the plan of the select committee, and I have done. Sir, I am not entitled to any of the merit, if there be any, in that plan. My own was to preserve the present basis of the senate, not because I placed any peculiar stress on the basis of valuation; but because I deemed it all-important to retain some element that might maintain a salutary check between the two houses. My own plan for the house of representatives was representation founded on the basis of population in districts, according to the system proposed by the gentleman from Northampton. Finding that this plan was not acceptable to a majority of the committee I

acquiesced in the plan reported by it. I have learned that we must not, in questions of government, stand upon abstract principles; but must content ourselves with practicable good. I do not pretend to think, nor do any of its advocates think, that the system of the select committee is perfect; but it will cure some defects in our present system which are of great and increasing importance. I have always viewed the representation in the house under the present constitution, as a most serious evil, and alarming to the future peace and happiness of the State. My dread has never been of the senate, but of that multitudinous assembly, which has been seen within these walls, and may again be seen if times of political excitement should occur. The more numerous the body the greater the danger from its movements in times, when it cannot or will not deliberate. I came here therefore willing and ready to make sacrifices to accomplish an essential *reduction* in that body. It was the only subject relative to the constitution on which I have always had a decided and earnest opinion. It was my fortune for some years to have a seat in our house of representatives; and for a short time to preside over its sittings, at a period when it was most numerous, and under the most powerful excitements. I am sorry to say it, but such is my opinion, that in no proper sense could it be called a deliberative assembly. From the excess of numbers deliberation became almost impossible; and but for the good sense and discretion of those who usually led in the debates, it would have been impracticable to have transacted business with anything like accuracy or safety. That serious public mischiefs did not arise from the necessary hurry and difficulty of the legislative business is to be accounted for only from the mutual forbearance and kindness, of those who enjoyed the confidence of the respective parties. If the State should go on in its population we might hereafter have 800 or 900 representatives according to the present system; and in times of public discontent, all the barriers of legislation may be broken down and the government itself be subverted. I wish most deeply and earnestly to preserve to my native State a *deliberative* legislature, where the sound judgment, and discretion, and sagacity of its best citizens may be felt and heard and understood at all times and under all circumstances. I should feel the liberties of the State secure, if this point were once fairly gained. I would yield up the little privileges of my own town and of any others, that our children may enjoy civil, religious and political liberty, as perfectly, nay more perfectly than their fathers. With these views I am ready to support the report of the select committee—not in part, but as a whole—as a system—and if part is to be rejected I do not feel myself bound to sustain the rest. Indeed upon no other ground than a great diminution of the house of representatives can I ever consent to pay the members out of the public treasury. For this is now the only efficient check against an overwhelming representation. By the plan of the select committee the small towns are great gainers—a sacrifice is made by the large towns and by them



only. They will bear a heavier portion of the pay of the representatives, and they will have a less proportionate representation than they now possess. And what do they gain in return? I may say nothing. All that is gained is public gain, a really deliberative legislature, and a representation in the senate, which is in fact a popular representation, emanating from and returning to the people, but so constructed that it operates as a useful check upon undue legislation and as a security to property.

I hope that this system will be adopted by a large majority, because it can scarcely otherwise receive the approbation of the people—I do not know that it is even desirable that the people should, nay, I might go further, and say that the people ought not to adopt any amendment which comes recommended by a bare majority of this Convention. If we are so little agreed among ourselves, as to what will be for the future public good, we had much better live under the present constitution, which has all our experience in its favor. Is any gentleman bold enough to hazard the assertion, that any new measure we may adopt can be more successful? I beg gentlemen to consider too what will be the effect if the amendments we now propose should be rejected by the people, having passed by a scanty majority. We shall then revert to the old constitution—and new parties, embittered by new feuds, or elated by victory, will be formed in the State and distinguished as constitutionalists and anti-constitutionalists; and thus new discontents and struggles for a new convention will agitate the Commonwealth. The revival of party animosities in any shape, is mostly to be deprecated. ~~Who does not~~ recollect with regret the violence with which party spirit in times past raged in this State, breaking asunder the ties of friendship and consanguinity? I was myself called upon to take an active part in the public scenes of those days. I do not regret the course which my judgment then led me to adopt; but I never can recollect, without the most profound melancholy, how often I have been compelled to meet, I will not say the *evil* but *averted* eyes, and the hostile opposition of men with whom, under other circumstances, I should have rejoiced to have met in the warmth of friendship. If new parties are to arise, new animosities will grow up, and stimulate new resentments. To the aged in this Convention, who now bow down under the weight of years, this can, of course, be of but little consequence—for they must soon pass into the tranquillity of the tomb;—to those of middle life it will not be of great importance, for they are far on their way to their final repose; they have little to hope of future eminence, and are fast approaching the period when the things of this world will fade away. But we have youth, who are just springing into life—we have children whom we love—and families, in whose welfare we feel the deepest interest. In the name of heaven, let us not leave to them the bitter inheritance of our contentions. Let us not transmit to them enmities which may sadden the whole of their lives. Let us not—like him of old, blind and smitten of his strength—in our anger seize upon the pillars of the constitution,

that we and our enemies may perish in their downfall. I would rather approach the altar of the constitution and pay my devotions there, and if our liberties must be destroyed, I, for one, would be ready to perish there in defending them.

Mr. CHILDS moved that the committee should rise and report progress. The motion was negatived.

Mr. CHILDS then rose to address the committee in favor of the resolutions ; but it being intimated that he was indisposed, he gave way to a renewal of the motion that the committee should rise.

The committee rose, reported progress and had leave to sit again. And the House adjourned.

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#### FRIDAY, DECEMBER 15.

The House met at 9 o'clock, and attended prayers offered by the Rev. Mr. Jenks ; after which the journal of yesterday was read.

*Apportionment of the Senate.*—On motion of Mr. WEBSTER, the House went into committee of the whole, on the unfinished business of yesterday, Mr. QUINCY in the chair.

The question before the committee was upon Mr. DEARBORN's resolution for dividing the Commonwealth into districts for the choice of senators according to population.

Mr. CHILDS of Pittsfield said that for the indulgence shown to him yesterday by the committee, he felt very grateful, and in return, he should trespass but a short time on their patience. Had the subject been treated in the manner in which he viewed it, he should not have risen. He had no expectation of distinguishing himself as a public speaker, his course of life was in a different direction ; but he felt it to be his duty to his constituents and to himself, not to give a silent vote on the present occasion. Mr. C. first considered the object and design and nature of governments, and said that though the subject had been profoundly discussed, the distinction between governments at different times had not been well kept up. Governments should conform to the state of society in any people. He took a view of the different kinds of governments in Europe, and the institutions and opinions which had grown out of them, and inferred that all calculations made in reference to them were inapplicable to this country. He then came to our own government. Our forefathers came over here, a band of brothers, with equal rights—a pure democracy, with no disposition to set one class of men above another—all engaged in the same noble cause, to establish liberty of conscience and a free government. Our government was founded on intelligence and morality. Never in any country was so fair an experiment made, to test the power of the people to govern themselves. What was necessary to make this experiment successful ? To make the division which now exists, of the executive, legislative and judicial departments ; thus forming a beautiful symmetry never before known in any government. They also divided the legisla-

tive departments into two assemblies, not to establish an aristocracy, but, as the gentleman from Boston had well observed, to constitute a senate to reconsider what might have passed through the other house too hastily. Not that he would have them constituted exactly alike. He knew no better system than the present of having one branch elected from large districts, and the other from small ones. Experiment had shown that in this manner men had been elected well qualified to fill the different offices with dignity. Mr. C. then came to the principle of apportionment of the senate according to valuation. He asked, was the senate the rich man's citadel? The present principle had been in operation for forty years, and what was the practical operation? It turns out that it is nothing more, than that the whole State has been represented in the same manner it would have been on the principle of population, except that the county of Suffolk has had four more senators than it would have had on that principle. He appealed to the good sense and candor of the committee whether this was any check, if a check was wanted. Was giving an undue representation to one section of the Commonwealth a proper check? No—unless it could be shown that Boston could, and would elect better men, than would have been elected in any other part of the State. This went to remove one of the fundamental principles of the government, that a majority shall rule. The object of the present resolution was nothing but to reduce the number of senators from Suffolk to two or at least to three. It shows only that Suffolk chooses four more than any other county of equal population. It was incumbent on the opposers of this resolution to show that the vote of an individual in one county should have three times the value of a vote in another. He acquiesced in all the eulogy on the citizens of Boston which had been made by the gentleman from Salem (Mr. STORY.) But it was not to be supposed that all the citizens would have the same intelligence and virtue which a large part of them have. The senators were not chosen by this intelligent and virtuous class alone, but by the multitude, as in other counties. The great argument had been, that wealth ought to be represented. He could see nothing in wealth to entitle it to a representation, and its natural influence showed that it did not need it. The fluctuation of wealth, so beautifully described yesterday by the gentleman from Salem, (Mr. STORY) was a sufficient reason why it should not be specifically represented. It was here today, and he wished to God it might be in Berkshire tomorrow. The principle stated by the gentleman from Worcester, (Mr. LINCOLN) was correct, though his example of the town of Hull might not precisely meet the principle. If foreigners put a large amount of property into any one district, it would give a right to an additional number of senators. It was perfectly proper that taxation and representation should go together, but not that half the representation should be on wealth and half on population. He did not believe that if we had had one representative in parliament, the revolution would have been stayed; if we had had a representation in proportion to our population, we

might then presume it would never have taken place. When we establish a government for ourselves, and all people, who are taxed, are represented in proportion to their numbers, representation and taxation do go hand in hand. Was not property in this way equally well protected as it would be by the rich, if you should introduce an aristocracy? Property was equally dear to the poor man as to the rich. It was a subject of wonder, that our constitution, under the circumstances in which it was made, was so beautiful a fabric as it is; not that it had a single defect. It was but an experiment. If we took away this defect, which was as clear as the sun in the firmament, would the experiment be less successful? The gentleman from Quincy justifies the principle in connection with the house of representatives, on the ground of its being a compromise. He was of a different opinion. It was not in the power of any delegate to give up any rights of his town. Make a just system, and no compromise would be necessary. The house of representatives stood on its own bottom. He was not bound to go into an explanation now, of the course he should be in favor of in respect to the house of representatives. In that branch there had been a popular representation hitherto, and probably would be. In no other state except New Hampshire, was this principle of valuation recognized. There are checks—different modes of election—different qualifications of electors and elected—different duration in office. He should agree that the senators be chosen for two, three or four years, or to the distinctions above mentioned, if necessary, and then we should have a check in reality. The county of Suffolk only was now represented, on principles not consistent with a free government. Gentlemen on all sides admitted that if a new constitution was to be formed, this principle should be left out. He could not then see the consistency of retaining it. And why limit the principle? He had heard no answer. If the principle was correct, it could be carried through. He was not contending for these four senators to be apportioned among other counties; he was willing they should be struck off, and the senate be reduced to thirty-two. One gentleman had endeavored to show that property could be represented; that dollars in Boston could be set off against dollars in Berkshire. This was meeting the question fairly, and it showed the folly of the principle. They had not dollars to oppose, but they had rights as dear as property. He was not present when the resolution was proposed, and adopted by a large majority; but he thought the vote would not be reversed. Gentlemen had thought of the subject before they came into the House, and he had seen nothing to shake their opinion, that this was the rotten part of the constitution, and would be struck off. Strike it off, and they might go on prosperously, and transmit improved to posterity, the privileges they had enjoyed.

Mr. DUTTON of Boston said he did not rise to enter into the general argument. He did not propose to follow gentlemen, in the discussion of the resolution as involving an essential principle of civil

government. After a debate that had brought forth so much ability, it did not belong to him, but to others, to pursue the general argument. His only object was to extract one proposition from the present state of the debate, and to follow it in some of its necessary consequences. The proposition was, that if the senate was to be formed upon numbers, and no alteration was to be made in the mode of assessing taxes, every plan which had been introduced would operate unequally and unjustly towards the county of Suffolk. He was sorry to mention the name of any county, but he believed if any other county stood in the same predicament that Suffolk did, it would find abler and more zealous defenders than he was. He trusted, however, that the few remarks he had to make, would show, that if this county was to be oppressed and injured, the State would suffer in the same proportion. By the report of the special committee, six senators are allotted to Suffolk ; but if the resolution prevails, this number will be reduced to two, or at most three. The six senators are now given by the constitution upon the principle of taxation, and the principle of the resolution is to be applied to reduce the number by one half, but not to reduce the taxation. The report of the special committee presents a system in all its parts ; it is a compromise of rights and interests ; and if any of its parts are taken away, it will operate unequally. If the principle of the senate is taken away, the formation of the house of representatives will be unjust. As the report stands, taken as a whole, there is a great concession, in the reduction of representation in the house ; and if the number of senators is to be reduced, we lose that for which the concession is made, in addition to the inequality arising from the mode of assessing taxes. The scheme of the gentleman from Roxbury, though more consistent in itself, presents the same difficulty and works the same injustice. The plan of the gentleman from Worcester, would operate more unjustly than any other yet proposed. It would enable four towns in the county of Worcester, with three thousand inhabitants each, to send as many representatives as the whole county of Suffolk. Taken in connection with the present resolution, it would reduce our representatives to eight, and our senators to three, and yet the whole burden of taxation would remain. He took the proposition then to be true, and would proceed to offer a few remarks to the gentlemen from the country upon its consequences. He would put it to them, if they had the power to carry this resolution and the disposition to use it, that though it might be excellent to have a giant's strength, it would be tyrannous to use it like a giant. Could it be supposed that the county of Suffolk would submit to so grievous a wrong, without a murmur ? Could it be thought desirable to honorable and high minded gentlemen, to plant a sentiment of injustice in the breasts of forty thousand people, which would descend from one generation to another with increasing aggravation ? for it ought to be remembered that nothing sunk so deep, or lasted so long, as the feeling of unmerited injury. Every gentleman in the country had some connection with the town, of business, or friendly in-

tercourse. He deprecated a measure, which would create or cherish any distinction between the agricultural and commercial parts of the State. He considered it as a social injury, a mischief, which would propagate itself till it should be felt in every corner of the State. But this was not all. He asked gentlemen to consider whether the prosperity of the commercial towns was not their own prosperity. He contended that the interests of agriculture and commerce were indissolubly connected. Who were the merchants? the agents and factors of the farmers; the men who brought to them what they wanted to buy, and took from them what they wanted to sell. The more capital those merchants had, and the greater their number, higher prices, and more markets would be found for the surplus produce of the farmers. It was therefore the interest of the farmer, that the commercial towns should increase in wealth and numbers, for it was the prosperity of the whole State. No maxim in political science was more true, and it was not too much to say, that it was commerce that made rocks and sands fertile. Besides, gentlemen would remember that we had no great staple; that foreign ships did not come here for cargoes of cotton, or rice, or tobacco, or flour; but on the other hand, so various were the articles destined to a distant market, so combined with manufactures, and suited to the wants of so many portions of this country, as well as of others, that it required numbers of these agents to transact the business. The difference in the business of merchants, is as great almost as it is between different professions. This is the result of commercial prosperity. Will you then lay unequal burthens upon the commercial towns? Will you give them less encouragement, or less protection for their rights, than you allow to other members of the State? Will you drive them to the other parts of the country where the rights of property will be better protected, and enterprise better rewarded? He asked gentlemen also to consider if the commercial towns were to be oppressed; if there were to be a dissocial, hostile spirit prevailing; if the ties which now bind us together are to be weakened or severed, who will suffer most, the merchants or the farmers? Examples were at hand. In ancient times Tyre and Carthage grew rich and powerful by commerce; so powerful did Carthage become, that she long maintained a struggle with Rome for the world's empire—though surrounded by deserts. He deprecated those evils; he put it to the attachment of gentlemen to the State of Massachusetts to say if it was not most desirable to prevent them. He could not believe that honorable gentlemen would be, or could be influenced by jealousy or prejudice, to do this great wrong. Neither could he think that they could be influenced by any considerations of party politics. The paltry distinctions of party will soon pass away; and the passions and interests of the day will soon be at rest; but the principles now to be decided will remain. He asked gentlemen to pause before they took the last step, before they inflicted an injury which might outlive the constitution they were revising.

Mr. LINCOLN said the distinguished attention with which he was

honored yesterday, demanded the acknowledgment of a reply. He should have been contented that the question should be decided without any further remarks from him—but the range that the discussion had taken, and the misapprehension of his remarks, forbade that he should be silent. He was besides the agent of those who would only be heard through him. The proposition before the House, was a simple and independent one—that the senate should be represented on the basis of population. It had been admitted that this was a proper basis for one branch, and he asked why it should necessarily be in the house of representatives instead of the senate? He insisted that this basis was proper for the senate. It was the most natural and obvious principle. If you assume the proportion of wealth, it was not a representation of property, but of the people. And to adopt the rule of representing the people according to wealth, conferred a power that was dangerous. The principle did not give to the rich man an influence according to his property, but gave the poor man who sat at the gate of the rich, the same influence. Take the money owned in a rich district and carry it to a poor one, without transferring the owners, and the right of representation was transferred, and given to the poor men there. It was the poor men, who were placed by the side of the property, wherever it was, that he feared—it was not the influence of the rich, but the influence which they conferred on the poor. The basis of wealth is transient. If property is mine today, it may be another's tomorrow. A representation of the people, predicated on this phantom, would seem idle. Wealth consists not in money, but in the productive labor of the country, in the soil and its produce. Found the representation on this substantial property, which cannot be affected by accident, and it will have some permanent basis. But it is said the basis is not wealth, but taxation—this is founded on valuation. He contended that the basis was not taxation. Did the people have an influence in proportion to the taxes which they paid? There was nothing in the constitution which predicated the representation in the senate on taxation. If the Legislature should impose all the taxes of the State on polls, the representation would not be on this taxation—it would be on the valuation. There is now a poll tax paid, and the basis is not founded on this, but on the valuation of property. He said he would take this occasion to thank gentlemen for their magnanimity in relation to his proposition. It had been condemned without being understood. He had had no opportunity of explaining it. What was it? That there should be a representation for every corporate town, and that the large towns should have an additional representation in an increasing ratio which should compensate for fractions in the smaller towns. This system was justified by the example of our ancestors in adopting the same system, and continuing it in practice for many years, with general approbation. The corporate right he did not consider strictly a vested legal right, but what he called a political right. What was the foundation of this right? In 1636 a law was

passed, granting to the freemen of every town the right to choose a representative in the General Court. In this law there was a restriction of the right of any town to two representatives. In 1692 a provincial law was passed, which allowed towns of from thirty to forty freeholders, to choose one representative—every town which had one hundred and twenty, to choose two, and the town of Boston to choose four. In 1775 a law was passed recognizing the chartered rights of the towns to choose representatives. In 1780 the people were so jealous of the corporate rights of the towns, that in forming the constitution, they expressly recognized the right of every corporate town—even the town of Hull—to choose a representative—though no town afterwards incorporated, was to have a right unless it had one hundred and fifty ratable polls. Why was this reservation made, unless it was in respect to the corporate right of the towns? Further, under the constitution it has been the practice of the Legislature to incorporate towns with the right, if they have more than one hundred and fifty ratable polls, to elect a representative; and connected with this right are corporate duties. Would it be just and equal to take away the right of representation, and continue upon them the imposition of the duties which result from their incorporation—the duty of supporting schools—highways—poor, &c. ? He thought not, though he might be singular in his opinion. He proceeded to consider the other part of his proposition—the creation of an ascending series, as the basis of representation in larger towns. He had proposed the plan with great modesty, and had expressly proposed the numbers for consideration. It had been his intention to propose another resolution, which should operate as a further restriction, that the representatives should be paid by their towns. He had stated that if these numbers were too high, lower numbers might be taken. Was it fair and candid, then, to take the numbers thus proposed, as his plan, which was to be adopted without alteration? It was not his plan—he had at that time no plan—he was willing to be governed in his opinion relating to the house, by the determination that should be made in relation to the senate. He proceeded to make some calculations to show that the inequality was not so great as had been represented, and that, if this plan were pursued, there might be towns of middling size that would not be more fully represented than Boston. The representatives from the town of Boston, would all count on one side; but take double, three times, or ten times the number from different corporations, and they might be so divided as to neutralize one another. He admitted that the town and country had but one great interest, and that considering the influence of the people of Boston in the Legislature, they had deported themselves with great moderation. Their power had always been exercised with a due regard to the rights of the people. There was no people in whom he had more confidence, and if the same amount of population were concentrated in any other town, he should feel a great deal less. It was so much easier to find



fault, than to commend, he hoped he should be indulged in finding some fault with the propositions of the committee. He would first notice the statement of the gentleman from Billerica, that in the select committee, he (Mr. L.) had agreed to none of the propositions which had been made. He said, that of the eighteen resolutions, he had voted against five, and in favor of all the rest.

Mr. LOCKE rose to explain. He said, that of the original propositions submitted to the committee, he was not aware that the gentleman from Worcester had approved of any one. And he believed he was correct in saying that he opposed them all. When the propositions were reduced to form, he did not mean to deny that he voted in favor of some of the particular resolutions.

Mr. LINCOLN said that they were at issue on a point of fact, but it was not the place to put himself on the country. He objected in committee to five of the resolutions—to making the valuation the basis of representation in the senate; to classing the small towns; and he objected still. He proceeded to consider the plan of the committee. The senate was to be apportioned according to the valuation, which gives to the counties of Suffolk and Essex one-third of the representation, though they are but one-fifth of the population of the State. Suffolk with a population of 33,000, was to have six senators, and Hampshire with a population of more than 70,000, would have only four. Was this equal? What was to counterbalance this inequality? A house of representatives on a mixed principle, by which one hundred and forty towns would be virtually disfranchised. It was not merely an inequality between the towns, but between the citizens of neighboring towns. An inhabitant of one town might vote for a representative every year, but in the neighboring town only every other year. It was a violation of corporate rights, and an outrage upon the equal rights of the people. He asked was it not so? More than one hundred and forty towns were to be classed and enjoy the privilege of sending a representative but once in two years, while the citizens of the large towns would exercise the same privilege every year. Was this equal? Men born in one town would indeed be equal with each other, but they would not be equal with those born in other towns. He demanded the authority by which this inequality was to be produced. The people were not familiar with any such principle, and would not be easily reconciled to it. A further inequality would ensue. There were to be 86,000 people, making nearly a fifth part of our population, wholly unrepresented every year in the Legislature of the Commonwealth. The system of the committee would give the towns containing 1200 inhabitants, and to those containing not quite 3600, the same right, the same proportion of representation. Was this just and equal? If it was, it became so by a political arithmetic, in which he had not been initiated. What would be the operation of the plan, in relation to the middling towns? He felt no squeamishness about alluding to the county or town in which he lived. In respect to the former, he was entirely

disinterested ; for the county of Worcester would be entitled to five senators, whether the apportionment was on valuation, or on population. But the town of Worcester would be entitled to but one representative, and by the proportion of valuation, would pay for five. That town, with 3000 inhabitants, would have the same representation as a small town by the side of it with 1200, and would yet pay ten times as much. Was this equal ? He hoped gentlemen would not violate their own principle, that taxation and representation should go hand in hand. And what was the equivalent which the small towns were to receive for giving up their privileges ? They were to get a little money—to get a mess of pottage for a birth-right. They were called upon to barter their privileges, rather than pay the cost of representation. The small towns would not thank gentlemen for the compliment. They would claim their right, though they might not use it when it was unnecessary ; but cost what it would, they would exercise the right when it became important. Were gentlemen here willing to go home to their constituents, and tell them they had bartered the right by which they held their seats ? Let them take the responsibility on themselves ; he washed his hands of it. The gentleman from Salem deprecated the number, which, under the present constitution, might fill the house of representatives, and alluded to times in which he had witnessed great inconveniences arising from this source ;—times when the political friends of that gentleman did many things, in which he hoped, and after what had been said, he was bound in honor to believe, that gentleman did not participate. He, too, (Mr. L.) had been a representative when there was a full house. It was in a period of great alarm, when the country was at war ; and he believed that the great numbers of the house had been, at that time, the means by which the country had been preserved. It was numbers in that house, that kept the people quiet—numbers, which could not be assailed by corruption—which could not be overawed by threats. Mr. L. said there was another feature of the system, which he looked upon as a preparation of chains and fetters for the people. He alluded to the amendatory provisions, which had been recommended by a select committee and agreed to in committee of the whole. This provision, though reported by a different committee, was to be viewed in connection with the resolutions he was examining, and was to be taken as a part of the system. What, he demanded, was the value of the amendatory principle ? One-third of the senate would come from the counties of Suffolk and Essex. Suppose Suffolk and Essex should lose in their population, and 400,000 inhabitants, in the other parts of the Commonwealth, should propose a reform in the senate on this account ? How was it to be effected ? Six senators would come from Suffolk and six from Essex ; and if a gentleman from the country happened to be in the chair of the senate, these two counties could successfully resist any amendment that should be proposed. This was a system with a vengeance, a system by which an amendment might, year after

year, be unanimously adopted by the house of representatives, and yet be prevented by the senators of two counties from going into effect. If this was a part of the system, it formed an additional reason for opposing it. He said there was no inconsistency in adopting some of the resolutions of the committee, and rejecting others. He thought the choice of senators by districts, according to the resolutions of the gentleman from Roxbury, was an equal system; if he was wrong, let some other system be taken for the senate. If a part of the plan of the select committee was adopted, it did not follow that gentlemen must vote for the whole. The chairman of that committee would allow him to say that there were intrinsic difficulties in the subject, and he trusted that if he was mistaken in his opinions in relation to it, he should not on that account forfeit all title to esteem. He had no hostility to compromises, but he was unwilling to yield principles. If any sacrifice was to be made, he preferred that it should be made on the altar of the people, and not on the altar of wealth.

Mr. KNEELAND of Andover inquired whether it was necessary to adopt the system proposed by the select committee in regard to the house of representatives, if the resolutions reported by them, respecting the senate, should be adopted. He said he was in favor of that part of their report which relates to the senate, and opposed to the present resolutions of the gentleman from Roxbury.

Mr. WEBSTER spoke in substance as follows :

I know not, sir, whether it be probable that any opinions or votes of mine are ever likely to be of more permanent importance, than those which I may give in the discharge of my duties in this body. And of the questions which may arise here, I anticipate no one of greater consequence than the present. I ask leave therefore to submit a few remarks to the consideration of the committee.

The subject before us, is the manner of constituting the legislative department of government. We have already decided that the legislative power shall exist, as it has heretofore existed, in two separate and distinct branches, a senate and a house of representatives. We propose also, at least I have heard no intimation of a contrary opinion, that these branches shall, in form, possess a negative on each other. And I presume I may take it for granted, that the members of both these houses are to be chosen annually. The immediate question, now under discussion is, *in what manner* shall the senators be elected? They are to be chosen in districts; but shall they be chosen, in proportion to the *number of inhabitants* in each district, or, in other words, *in proportion to the part which each district bears in the public burdens of the State*. The latter is the existing provision of the constitution; and to this I give my support. The proposition of the honorable member from Roxbury, (Mr. DEARBORN) proposes to divide the State into certain *legislative districts*, and to choose a given number of senators, and a given number of representatives, in each district, *in proportion to population*. This I understand. It is a simple and plain system. The

honorable member from Pittsfield, and the honorable member from Worcester support the first part of this proposition—that is to say, that part which provides for the choice of *senators*, according to population—without explaining entirely their views, as to the latter part, relative to the choice of *representatives*. They insist that the questions are distinct, and capable of a separate consideration and decision. I confess myself, sir, unable to view the subject in that light. It seems to me there is an essential propriety in considering the questions together; and in forming our opinions on the constitution of one, with reference to that of the other. The Legislature is one great machine of government, not two machines; the two houses are its parts, and its utility will as it seems to me, depend, not merely on the materials of these parts, or their separate construction, but on their accommodation also, and adaptation to each other. Their balanced and regulated movement, when united, is that which is expected to insure safety to the State; and who can give any opinion on this, without first seeing the construction of both, and considering how they are formed and arranged, with respect to their mutual relation. I cannot imagine, therefore, how the member from Worcester should think it uncandid to inquire of him, since he supports this mode of choosing senators, *what mode* he proposes for the choice of representatives.

It has been said, that the constitution, as it now stands, gives more than an equal and proper number of senators to the county of Suffolk. I hope I may be thought to contend for the general principle, without being influenced by any regard to its local application. I do not inquire, whether the senators whom this principle brings into the government, will come from the county of Suffolk, or from the Housatonic River, or the extremity of Cape Cod. I wish to look only to the principle, and as I believe that to be sound and salutary, I give my vote in favor of maintaining it.

In my opinion, sir, there are two questions before the committee; the first is, shall the legislative department be constructed with any other *check*, than such as arises simply from dividing the members of this department into two houses? The second is, if such other and further check ought to exist, *in what manner* shall it be created?

If the two houses are to be chosen in the manner proposed by the resolutions of the member from Roxbury, there is obviously no other check or control than a division into separate chambers. The members of both houses are to be chosen at the same time, by the same electors, in the same districts, and for the same term of office. They will of course all be actuated by the same feelings and interests. Whatever motives may at the moment exist, to elect particular members of one house, will operate equally on the choice of members of the other. There is so little of real utility in this mode that, if nothing more be done, it would be more expedient to choose all the members of the Legislature, without distinction, simply as members of the Legislature, and to make the division into two

houses, either by lot, or otherwise, after these members, thus chosen, should have come up to the Capital.

I understand the reason of *checks and balances*, in the legislative power, to arise from the truth that, in representative governments, that department is the leading and predominating power; and if its will may be, at any time, suddenly and hastily expressed, there is great danger that it may overthrow all other powers. Legislative bodies naturally feel strong, because they are numerous, and because they consider themselves as the immediate representatives of the people. They depend on public opinion to sustain their measures, and they undoubtedly possess great means of influencing public opinion. With all the guards which can be raised by constitutional provisions, we are not likely to be too well secured against cases of improper, or hasty, or intemperate legislation. It may be observed, also, that the executive power, so uniformly the object of jealousy to republics, has become, in the states of this Union, deprived of the greatest part, both of its importance and its splendor, by the establishment of the general government. While the states possessed the power of making war and peace, and maintained military forces by their own authority, the power of the state executives was very considerable, and respectable. It might then even be an object, in some cases, of a just and warrantable jealousy. But a great change has been wrought. The care of foreign relations, the maintenance of armies and navies, and their command and control, have devolved on another government. Even the power of appointment, so exclusively, one would think, an executive power, is, in very many of the states, held or controlled by the legislature; that department either making the principal appointments, itself, or else surrounding the chief executive magistrate with a council of its own election, possessing a negative upon his nominations.

Nor has it been found easy, nor in all cases possible, to preserve the judicial department from the progress of legislative encroachment. Indeed, in some of the states all judges are appointed by the legislature; in others, although appointed by the executive, they are removable at the pleasure of the legislature. In all, the provision for their maintenance is necessarily to be made by the legislature. As if Montesquieu had never demonstrated the necessity of separating the departments of government; as if Mr. Adams had not done the same thing, with equal ability, and more clearness, in his defence of the American Constitution; as if the sentiments of Mr. Hamilton and Mr. Madison were already forgotten; we see, all around us, a tendency to extend the legislative power over the proper sphere of the other departments. And as the legislature, from the very nature of things, is the most powerful department, it becomes necessary to provide, in the mode of forming it, some check which shall ensure deliberation and caution in its measures. If all legislative power rested in one house, it is very problematical, whether any proper independence could be given, either to the executive or the judiciary. Experience does not speak encouragingly

on that point. If we look through the several constitutions of the states, we shall perceive that generally the departments are most distinct and independent, where the legislature is composed of two houses, with equal authority, and mutual checks. If all legislative power be in one popular body, all other power, sooner or later, will be there also.

I wish now, sir, to correct a most important mistake, in the manner in which this question has been stated. It has been said, that we propose to give to property, merely as such, a control over the people numerically considered. But this I take not to be at all the true nature of the proposition. The senate is not to be a check on the *people*, but on the *house of representatives*. It is the case of an authority, given to *one* agent, to check or control the acts of *another*. The people, having conferred on the house of representatives, powers which are great, and, from their nature, liable to abuse, require for their own security another house, which shall possess an effectual negative on the first. This does not limit the power of the people; but only the authority of their agents. It is not a restraint on their rights, but a restraint on that power which they have delegated. It limits the authority of agents, in making laws to bind their principles. And if it be wise to give one agent the power of checking or controlling another, it is equally wise, most manifestly, that there should be some difference of character, sentiment, feeling, or origin, in that agent, who is to possess this control. Otherwise, it is not at all probable that the control will ever be exercised. To require the consent of two agents to the validity of an act, and yet to appoint agents so similar, in all respects, as to create a moral certainty that what one does the other will do also, would be inconsistent and nugatory. There can be no effectual control without some difference of origin, or character, or interest, or feeling, or sentiment. And the great question, in this country, has been, where to find, or how to create this difference, in governments entirely elective and popular? Various modes have been attempted, in various states. In some, a difference of qualification has been required, in the persons to be elected. This obviously produces little or no effect. All property qualification, even the highest, is so low as to produce no exclusion, to any extent, in any of the states. A difference of age, in the persons elected, is sometimes required; but this is found to be equally unimportant. It has not happened, either, that any consideration of the relative rank of the members of the two houses has had much effect on the character of their constituent members. Both in the state governments, and in the United States government, we daily see persons elected into the house of representatives who have been members of the senate. Public opinion does not attach so much weight and importance to the distinction, as to lead individuals greatly to regard it. In some of the states, a different sort of qualification in the electors is required, for the two houses; and this is probably the most proper and efficient check. But such has not been the provision in this Commonwealth, and there are strong

objections to introducing it. In other cases, again, there is a double election for senators ; electors being first chosen, who elect senators. Such is the constitution of Maryland ; in which the senators are elected, for five years, by electors, appointed in equal numbers by the counties ; a mode of election not unlike that of choosing representatives in Parliament for the boroughs of Scotland. In this State the qualification of the voters is the same, and there is no essential difference in that of the persons chosen. But, in apportioning the senate to the different districts of the State, the present constitution assigns to each district, a number proportioned to its public taxes. Whether this be the best mode of producing a difference in the construction of the two houses, is not now the question ; but the question is, whether this be better than no mode.

The gentleman from Roxbury called for authority on this subject. He asked what writer of reputation had approved the principle for which we contend. I should hope, sir, that even if this call could not be answered, it would not necessarily follow that the principle should be expunged. Governments are instituted for practical benefit, not for subjects of speculative reasoning merely. The best authority for the support of a particular principle or provision in government, is experience ; and, of all experience, our own, if it have been long enough to give the principle a fair trial, should be most decisive. This provision has existed for forty years ; and while so many gentlemen contend that it is wrong in theory, no one has shown that it has been either injurious or inconvenient in practice. No one pretends that it has caused a bad law to be enacted or a good one to be rejected. To call on us, then, to strike out this provision, because we should be able to find no authority for it in any book on government, would seem to be like requiring a mechanic to abandon the use of an implement, which had always answered all the purposes designed by it, because he could find no model of it in the patent office.

But, sir, I take the *principle* to be well established by writers of the greatest authority. In the first place, those who have treated of natural law have maintained, as a principle of that law, that, as far as the object of society is the protection of something in which the members possess unequal shares, it is just that the weight of each person in the common councils, should bear a relation and proportion to his interest. Such is the sentiment of Grotius, and he refers, in support of it, to several institutions among the ancient states.

Those authors, who have written more particularly on the subject of political institutions, have, many of them, maintained similar sentiments. Not, indeed, that every man's power should be in exact proportion to his property, but that, in a general sense, and in a general form, property, as such, should have its weight and influence in political arrangement. Montesquieu speaks, with approbation, of the early Roman regulation, made by Servius Tullius, by

which the people were distributed into classes according to their property, and the public burdens apportioned to each individual, according to the degree of power which he possessed in the government. By which regulation, he observes, some bore with the greatness of their tax, because of their proportionable participation in power and credit; others consoled themselves for the smallness of their power and credit, by the smallness of their tax. One of the most ingenious of political writers is Mr. Harrington, an author not now read so much as he deserves. It is his leading object, in his "*Oceana*," to prove, that power *naturally* and *necessarily* follows property. He maintains that a government, founded on property, is legitimately founded; and that a government founded on the disregard of property is founded in injustice, and can only be maintained by military force. "If one man," says he, "be sole landlord, like the grand seignior, his empire is absolute. If a few possess the land, this makes the gothic or feudal constitution. If the *whole* people be landlords, then is it a Commonwealth." "It is strange," says Mr. Pope, in one of his recorded conversations, "that Harrington should be the first man to find out so evident and demonstrable a truth, as that of property being the true basis and *measure* of power." In truth he was not the first: the idea is as old as political science itself. It may be found in Aristotle, Lord Bacon, Sir Walter Raleigh, and other writers. Harrington seems, however, to be the first writer who has illustrated and expanded the principle, and given to it the effect and prominence which justly belong to it. To this sentiment, sir, I entirely agree. It seems to me to be plain, that, in the absence of military force, political power naturally and necessarily goes into the hands which hold the property. In my judgment, therefore, a republican form of government rests not more on political constitutions than on those laws which regulate the descent and transmission of property. Governments like ours could not have been maintained, where property was holden according to the principles of the feudal system; nor, on the other hand, could the feudal constitution possibly exist with us. Our New England ancestors brought hither no great capitals from Europe; and if they had, there was nothing productive in which they could have been invested. They left behind them the whole feudal system of the other continent. They broke away at once from that system of military service, established in the dark ages, and which continues, down even to the present time, more or less to affect the condition of property all over Europe. They came to a new country. There were, as yet, no lands yielding rent, and no tenants rendering service. The whole soil was unreclaimed from barbarism. They were, themselves, either from their original condition, or from the necessity of their common interest, nearly on a general level in respect to property. Their situation demanded a parcelling out and division of the lands; and it may be fairly said, that this necessary act *fixed the future frame and form of their government*. The character of their political institutions



was determined by the fundamental laws respecting property. The laws rendered estates divisible among sons and daughters. The right of primogeniture, at first limited and curtailed, was afterwards abolished. The property was all freehold. The entailment of estates, long trusts, and the other processes for fettering and tying up inheritances, were not applicable to the condition of society, and seldom made use of. On the contrary, alienation of the land was every way facilitated, even to the subjecting of it to every species of debt. The establishment of public registries, and the simplicity of our forms of conveyance, have greatly facilitated the change of real estate from one proprietor to another. The consequence of all these causes has been, a great subdivision of the soil, and a great equality of condition; the true basis, most certainly, of a popular government. "If the people," says Harrington, "hold three parts in four of the territory, it is plain there can neither be any single person nor nobility able to dispute the government with them; in this case, therefore, *except force be interposed*, they govern themselves."

The history of other nations may teach us how favorable to public liberty is the division of the soil into small freeholds, and a system of laws, of which the tendency is, without violence or injustice, to produce and to preserve a degree of equality of property. It has been estimated, if I mistake not, that about the time of Henry the Seventh, four fifths of the land in England was holden by the great barons and ecclesiastics. The effects of a growing commerce soon afterwards began to break in on this state of things, and before the Revolution in 1688, a vast change had been wrought. It is probable, perhaps, that for the last half century, the process of subdivision in England has been retarded, if not reversed; that the great weight of taxation has compelled many of the lesser freeholders to dispose of their estates, and to seek employment in the army and navy, in the professions of civil life, in commerce, or in the colonies. The effect of this on the British constitution cannot but be most unfavorable. A few large estates grow larger; but the number of those who have no estates also increases; and there may be danger lest the inequality of property become so great, that those who possess it may be dispossessed by force. In other words, that the government may be overturned.

A most interesting experiment of the effect of a subdivision of property, on government, is now making in France. It is understood that the law regulating the transmission of property, in that country, now divides it, real and personal, among all the children equally, both sons and daughters; and that there is, also, a very great restraint on the power of making dispositions of property by will. It has been supposed that the effect of this might probably be, in time, to break up the soil into such small subdivisions, that the proprietors would be too *poor* to resist the encroachments of executive power. I think far otherwise. What is lost in individual wealth will be more than gained in numbers, in intelligence, and in a sympathy of sentiment. If indeed only one or a few landholders

were to resist the crown, like the barons of England, they must, of course, be great and powerful landholders, with multitudes of retainers, to promise success. But if the proprietors of a given extent of territory are summoned to resistance, there is no reason to believe that such resistance would be less forcible or less successful, because the number of such proprietors should be great. Each would perceive his own importance, and his own interest, and would feel that natural elevation of character which the consciousness of property inspires. A common sentiment would unite all, and numbers would not only add strength, but excite enthusiasm. It is true that France possesses a vast military force, under the direction of an hereditary executive government; and military power, it is possible, may overthrow any government. It is in vain, however, in this period of the world, to look for security against military power to the arm of the great landholders. That notion is derived from a state of things long since past; a state in which a feudal baron, with his retainers, might stand against the sovereign, who was himself but the greatest baron, and his retainers. But at present, what could the richest landholder do against one regiment of disciplined troops? Other securities, therefore, against the prevalence of military power must be provided. Happily for us, we are not so situated as that any purpose of national defence requires, ordinarily and constantly, such a military force as might seriously endanger our liberties.

In respect, however, sir, to the recent law of succession in France, to which I have alluded, I would, presumptuously perhaps, hazard a conjecture, that if the government do not change the law, the law, in half a century, will change the government; and that this change will be not in favor of the power of the crown, as some European writers have supposed, but against it. Those writers only reason upon what they think correct general principles in relation to this subject. They acknowledge a want of experience. Here we have had that experience; and we know that a multitude of small proprietors, acting with intelligence, and that enthusiasm which a common cause inspires, constitute not only a formidable, but an invincible power.

The true principle of a free and popular government would seem to be, so to construct it as to give to all, or at least to a very great majority, an interest in its preservation; to found it, as other things are founded, on men's interest. The stability of government requires that those who desire its continuance should be more powerful than those who desire its dissolution. This power, of course, is not always to be measured by mere numbers. Education, wealth, talents, are all parts and elements of the general aggregate of power. But numbers, nevertheless, constitute ordinarily, the most important consideration, unless indeed there be a *military force* in the hands of the few, by which they can control the many. In this country, we have actual existing systems of government, in the protection of which it would seem a great majority, both in numbers and in

other means of power and influence, must see their interest. But this state of things is not brought about merely by written political constitutions, or the mere manner of organizing the government ; but also by the laws which regulate the descent and transmission of property. The freest government, if it could exist, would not be long acceptable, if the tendency of the laws were to create a rapid accumulation of property in few hands, and to render the great mass of the population dependent and penniless. In such a case the popular power must break in upon the rights of property, or else the influence of property must limit and control the exercise of popular power. Universal suffrage, for example, could not long exist in a community where there was great inequality of property. The holders of estates would be obliged in such case, either in some way to restrain the right of suffrage, or else such right of suffrage would ere long divide the property. In the nature of things, those who have not property, and see their neighbors possess much more than they think them to need, cannot be favorable to laws made for the protection of property. When this class becomes numerous, it grows clamorous. It looks on property as its prey and plunder, and is naturally ready, at all times, for violence and revolution.

It would seem, then, to be the part of political wisdom to found government on property ; and to establish such distribution of property, by the laws which regulate its transmission and alienation, as to interest the great majority of society in the protection of the government. This is, I imagine, the true theory and the actual practice of our republican institutions. With property divided, as we have it, no other government than that of a republic could be maintained, even were we foolish enough to desire it. There is reason, therefore, to expect a long continuance of our systems. Party and passion, doubtless, may prevail at times, and much temporary mischief be done. Even modes and forms may be changed, and perhaps for the worse. But a great revolution in regard to property must take place, before our governments can be moved from their republican basis, unless they be violently struck off by military power. The people possess the property, more emphatically than it could ever be said of the people of any other country, and they can have no interest to overturn a government which protects that property by equal laws.

If the nature of our institutions be to found government on property, and that it should look to those who hold property for its protection, it is entirely just that property should have its due weight and consideration in political arrangements. Life and personal liberty are, no doubt, to be protected by law ; but property is also to be protected by law, and is the fund out of which the means for protecting life and liberty are usually furnished. We have no experience that teaches us, that any other rights are safe, where property is not safe. Confiscation and plunder are generally, in revolutionary commotions, not far before banishment, imprisonment and death. It would be monstrous to give even the name of gov-

ernment, to any association, in which the rights of property should not be competently secured. The disastrous revolutions which the world has witnessed; those political thunder-storms and earthquakes which have overthrown the pillars of society from their very deepest foundations, have been revolutions *against property*. Since the honorable member from Quincy (President ADAMS) has alluded, on this occasion, to the history of the ancient states, it would be presumption, in me, to dwell upon it. It may be truly said, however, I think, that Rome herself is an example of the mischievous influence of the popular power, when disconnected with property, and in a corrupt age. It is true, the arm of Cæsar prostrated her liberty; but Cæsar found his support within her very walls. Those who were profligate, and necessitous, and factious, and desperate, and capable, therefore, of being influenced by bribes and largesses, which were distributed with the utmost prodigality, outnumbered and outvoted, in the tribes and centuries, the substantial, sober, prudent and faithful citizens. Property was in the hands of one description of men, and power in those of another; and the balance of the constitution was destroyed. Let it never be forgotten that it was the popular magistrates, elevated to office where the bad outnumbered the good, where those who had no stake in the Commonwealth, by clamor, and noise, and numbers, drowned the voice of those who had, that laid the neck of Rome at the foot of her conqueror. When Cæsar, manifesting a disposition to march his army into Italy, approached that little stream, which has become so memorable from its association with his character and conduct, a decree was proposed in the senate, declaring him a public enemy, if he did not disband his troops. To this decree the popular tribunes, the sworn protectors of the people, interposed their negative; and thus opened the high road of Italy, and the gates of Rome herself, to the approach of her conqueror.

The English revolution of 1688 was a revolution *in favor of property*, as well as of other rights. It was brought about by the men of property, for their security; and our own immortal revolution was undertaken, not to shake or plunder property, but to protect it. The acts of which the country complained, were such as violated rights of property. An immense majority of all those who had an interest in the soil were in favor of the revolution; and they carried it through, looking to its results for the security of their possessions. It was the property of the frugal yeomanry of New-England, hard earned, but freely given, that enabled her to act her proper part, and perform her full duty, in achieving the independence of the country.

I would not be thought, Mr. Chairman, to be among those who underrate the value of military service. My heart beats, I trust, as responsive as any one's, to a soldier's claim for honor and renown. It has ever been my opinion, however, that while celebrating the military achievements of our countrymen, in the revolutionary contest, we have not always done equal justice to the merits, and the sufferings of those who sustained, on their property, and on their

means of subsistence, the great burden of the war. Any one, who has had occasion to be acquainted with the records of the New-England towns, knows well how to estimate those merits, and those sufferings. Nobler records of patriotism exist nowhere. Nowhere can there be found higher proofs of a spirit, that was ready to hazard all, to pledge all, to sacrifice all, in the cause of the country. Instances were not unfrequent, in which small freeholders parted with their last hoof, and the last measure of corn from their granaries, to supply provisions for the troops, and hire service for the ranks. The voice of OTIS and of ADAMS in Faneuil Hall, found its full and true echo, in the little councils of the interior towns; and if, within the continental congress, patriotism shone more conspicuously, it did not there exist more truly, nor burn more fervently; it did not render the day more anxious, or the night more sleepless; it sent up no more ardent prayer to God for succor; and it put forth, in no greater degree, the fullness of its effort, and the energy of its whole soul and spirit, in the common cause, than it did in the small assemblies of the towns. I cannot, therefore, sir, agree that it is in favor of society, or in favor of the people, to constitute government, with an entire disregard to those who bear the public burdens, in times of great exigency. This question has been argued, as if it were proposed only to give an advantage to a few rich men. I do not so understand it. I consider it as giving property, generally, a representation in the senate, both because it is just that it should have such representation, and because it is a convenient mode of providing that *check*, which the constitution of the Legislature requires. I do not say that such check might not be found in some other provision; but this is the provision already established, and it is, in my opinion, a just and proper one.

I will beg leave to ask, sir, whether property may not be said to *deserve* this portion of respect and power in the government? It pays, at this moment, I think, *five sixths* of all the public taxes; *one sixth* only being raised on persons. Not only, sir, do these taxes support those burdens, which all governments require, but we have, in New-England, from early times holden property to be subject to *another* great public use;—I mean the support of schools.

In this particular we may be allowed to claim a merit of a very high and peculiar character. This Commonwealth, with other of the New-England States, early adopted, and has constantly maintained the principle, that it is the undoubted right, and the bounden duty of government, to provide for the instruction of all youth. That which is elsewhere left to chance, or to charity, we secure by law. For the purpose of public instruction, we hold every man subject to taxation, in proportion to his property, and we look not to the question, whether he, himself, have, or have not, children to be benefited by the education for which he pays. We regard it as a wise and liberal system of police, by which property, and life, and the peace of society are secured. We seek to prevent, in

some measure, the extension of the penal code, by inspiring a salutary and conservative principle of virtue and of knowledge, in an early age. We hope to excite a feeling of respectability and a sense of character, by enlarging the capacity, and increasing the sphere of intellectual enjoyment. By general instruction, we seek, as far as possible, to purify the whole moral atmosphere; to keep good sentiments uppermost, and to turn the strong current of feeling and opinion, as well as the censures of the law, and the denunciations of religion, against immorality and crime. We hope for a security, beyond the law, and above the law, in the prevalence of enlightened and well-principled moral sentiment. We hope to continue, and to prolong the time, when, in the villages and farm houses of New-England, there may be undisturbed sleep, within unbarred doors. And knowing that our government rests directly on the public will, that we may preserve it, we endeavor to give a safe and proper direction to that public will. We do not, indeed, expect all men to be philosophers, or statesmen; but we confidently trust, and our expectation of the duration of our system of government rests on that trust, that by the diffusion of general knowledge, and good and virtuous sentiments, the political fabric may be secure, as well against open violence and overthrow, as against the slow but sure undermining of licentiousness.

We know, sir, that at the present time an attempt is making in the English parliament to provide by law for the education of the poor, and that a gentleman of distinguished character, (Mr. Brougham) has taken the lead, in presenting a plan to government for carrying that purpose into effect. And yet, although the representatives of the three kingdoms listened to him with astonishment, as well as delight, we hear no principles with which we ourselves have not been familiar from youth; we see nothing in the plan, but an approach towards that system which has been established in this State, for more than a century and a half. It is said, that in England, not more than *one child in fifteen*, possesses the means of being taught to read and write; in Wales, *one in twenty*; in France, until lately, when some improvement was made, not more than *one in thirty-five*. Now, sir, it is hardly too strong to say that in this State, *every child possesses* such means. It would be difficult to find an instance to the contrary unless where it was owing to the negligence of the parent—and in truth the means are actually used and enjoyed by nearly every one. A youth of fifteen, of either sex, who cannot both read and write, is very unfrequently to be found. How many such can any member of this Convention remember to have met with in ten years? Sir, who can make this comparison, or contemplate this spectacle, without delight, and a feeling of just pride? And yet, sir, what is it, but the *property* of the rich, devoted, by law, to the education of the poor, which has produced this state of things? Does any history show property more beneficently applied? Did any government ever subject the property of those who have estates, to a burden, for a purpose more favorable to the poor, or more

useful to the whole community? Sir, *property* and the power which the law exercises over it, for the purpose of instruction, is the basis of the system. It is entitled to the respect and protection of government, because, in a very vital respect, it aids and sustains government. The honorable member from Worcester, in contending for the admission of the mere popular principle in all branches of the government, told us, that our system rested on the intelligence of the community. He told us truly. But allow me, sir, to ask the honorable gentleman, what, but property, supplies the means of that intelligence? What living fountain feeds this ever-flowing, ever-refreshing, ever-fertilizing stream, of public instruction and general intelligence? If we take away from the towns the power of assessing taxes on property, will the school houses remain open? If we deny to the poor, the benefit which they now derive from the property of the rich, will their children remain on their forms, or will they not, rather, be in the streets, in idleness and in vice?

I might ask, again; sir, how is it with religious instruction? Do not the towns and parishes raise money, by vote of the majority, assessed on property, for the maintenance of religious worship? Are not the poor, as well as the rich, benefited by the means of attending on public worship, and do they not, equally with the rich, possess a voice and vote, in the choice of the minister, and in all other parish concerns? Does any man, sir, wish to try the experiment of striking out of the constitution the regard which it has hitherto maintained for property, and of foregoing also the extraordinary benefit which society among us, for near two centuries, has derived, from laying the burden of religious and literary instruction of all classes upon property? Does any man wish to see those only worshipping God, who are able to build churches and maintain ministers for themselves; and those children only educated, whose parents possess the means of educating them? Sir, it is as unwise as it is unjust, to make property an object of jealousy. Instead of being, in any just sense, a popular course, such a course would be most injurious and destructive to the best interest of the people. The nature of our laws sufficiently secures us against any dangerous accumulations; and, used and diffused, as we have it, the whole operation of property is in the highest degree useful, both to the rich and to the poor. I rejoice, sir, that every man in this community may call all property his own, so far as he has occasion for it, to furnish for himself and his children the blessings of religious instruction and the elements of knowledge. This celestial, and this earthly light, he is entitled to by the fundamental laws. It is every poor man's undoubted birthright, it is the great blessing which this constitution has secured to him, it is his solace in life, and it may well be his consolation in death, that his country stands pledged by the faith which it has plighted to all its citizens, to protect his children from ignorance, barbarism and vice.

I will now proceed to ask, sir, whether we have not seen, and whether we do not at this moment see, the advantage and benefit

of giving security to property by this and all other reasonable and just provisions? The constitution has stood, on its present basis, forty years. Let me ask, what state has been more distinguished for wise and wholesome legislation? I speak, sir, without the partiality of a native, and also without intending the compliment of a stranger; and I ask, what example have we had of better legislation? No violent measures, affecting property, have been attempted. Stop-laws, suspension laws, tender laws, all the tribe of those arbitrary and tyrannical interferences between creditor and debtor which, wheresoever practised, generally end in the ruin of both, are strangers to our statute book. An upright and intelligent judiciary has come in aid of wholesome legislation; and general security for public and private rights has been the result. I do not say that this is peculiar, I do not say that others have not done as well. It is enough, that in these respects we shall be satisfied that we are not behind our neighbors. No doubt, sir, there are benefits of every kind, and of great value, in possessing a character of government, both in legislative and judicial administration, which secures well the rights of property; and we should find it so, by unfortunate experience, should that character be lost. There are millions of personal property now in this Commonwealth, which are easily transferable, and would be instantly transferred elsewhere, if any doubt existed of its entire security. I do not know how much of this stability of government and of the general respect for it, may be fairly imputed to this particular mode of organizing the senate. It has, no doubt, had some effect. It has shown a respect for the rights of property, and may have operated on opinion, as well as upon measures. Now to strike out and obliterate it, as it seems to me, would be in a high degree unwise and improper.

As to the *right* of apportioning senators upon this principle, I do not understand how there can be a question about it. All government is a modification of general principles and general truths, with a view to practical utility. Personal liberty, for instance, is a clear right, and is to be provided for; but it is not a clearer right than the right of property, though it may be more important. It is therefore entitled to protection. But property is also to be protected; and when it is remembered how great a portion of the people of this State possess property, I cannot understand how its protection or its influence is hostile to their rights and privileges.

For these reasons, sir, I am in favor of maintaining that *check* in the constitution of the Legislature, which has so long existed there.

I understand the gentleman from Worcester (Mr. LINCOLN), to be in favor of a check, but it seems to me he would place it in the wrong house. Besides, the sort of *check* he proposes appears to me to be of a novel nature, as a balance, in government. He proposes to choose the senators according to the number of inhabitants; and to choose representatives, not according to that number, but in proportions greatly unequal in the town corporations. It has been stated to result from computation, and I do not understand it is denied,



that on his system a majority of the representatives will be chosen by towns not containing *one third part* of the whole population of the State. I would beg to ask, sir, on what principle this can stand; especially in the judgment of those who regard *population* as the only just basis of representation? But, sir, I have a preliminary objection to this system; which is, that it reverses all our common notions, and constitutes the *popular* house upon *anti-popular* principles. We are to have a popular senate of thirty-six members, and we are to place the *check* of the system in a house of representatives of two hundred and fifty members! All money bills are to originate in the house, yet the house is not to be the popular branch. It is to exceed the senate seven or eight to one, in point of numbers—yet the senate is to be chosen on the popular principle, and the house on some other principle.

It is necessary here, sir, to consider the manner of electing representatives in this Commonwealth as heretofore practised, the necessity which exists of reducing the present number of representatives, and the propositions which have been submitted for that purpose. Representation by towns or townships, (as they might have been originally more properly called) is peculiar to New England. It has existed, however, since the first settlement of the country. These local districts are so small, and of such unequal population, that if every town is to have one representative, and larger towns as many more as their population, compared with the smallest town, would numerically entitle them to, a very numerous body must be the consequence, in any large state. Five hundred members, I understand, may now be constitutionally elected to the house of representatives; the very statement of which number shows the necessity of reduction. I agree, sir, that this is a very difficult subject. Here are three hundred towns, all possessing the right of representation; and representation by towns, is an ancient habit of the people. For one, I am disposed to preserve this mode, so far as may be practicable. There is always an advantage in making the revisions which circumstances may render necessary, in a manner which does no violence to ancient habits and established rules. I prefer, therefore, a representation by towns, even though it should necessarily be somewhat numerous, to a division of the State into new districts, the parts of which might have little natural connection or little actual intercourse with one another. But I ground my opinion in this respect on fitness and expediency, and the sentiments of the people; not on absolute right. The town corporations, simply as such, cannot be said to have any *right* to representation; except so far as the constitution creates such right. And this I apprehend to be the fallacy of the argument of the hon. member from Worcester. He contends, that the smallest town has a *right* to its representative. This is true; but the largest town (Boston) has a *right* also to fifty. These rights are precisely equal. They stand on the same ground, that is, on the provisions of the existing constitution. The hon. member thinks it quite just to reduce the right of the large

town from fifty to ten, and yet that there is no power to affect the right of the small town; either by uniting it with another small town, for the choice of a representative, or otherwise. But I do not assent to that opinion. If it be right to take away half, or three fourths of the representation of the large towns, it cannot be right to leave that of the small towns undiminished. The report of the committee proposes that these small towns shall elect a member every other year, half of them sending one year, and half the next; or else that two small towns shall unite and send one member every year. There is something apparently irregular and anomalous in sending a member every other year; yet, perhaps, it is no great departure from former habits; because these small towns being, by the present constitution, compelled to pay their own members, have not, ordinarily, sent them oftener, on the average, than once in two years.

The honorable member from Worcester founds his argument on the *right* of town corporations, as such, to be represented in the Legislature. If he only means that right which the constitution at present secures, his observation is true, while the constitution remains unaltered. But if he intend to say that such right exists, *prior* to the constitution, and independent of it, I ask whence it is derived? Representation of the PEOPLE has heretofore been by towns, because such a mode has been thought convenient. Still it has been the representation of the people. It is no *corporate right*, to partake in the sovereign power and form a part of the Legislature. To establish this right, as a corporate right, the gentleman has enumerated the *duties* of the town corporation; such as the maintenance of public worship, public schools, and public highways; and insists that the performance of these duties gives the town a right to a representative in the Legislature. But I would ask, sir, what possible ground there is for this argument? The burden of these duties falls not on any corporate funds belonging to the towns, but on the people, under assessments made on them individually, in their town meetings. As distinct from their individual *inhabitants*, the towns have no interest in these affairs. These duties are imposed by general laws; they are to be performed by the people, and if the people are represented in the making of these laws, the object is answered, whether they should be represented in one mode or another. But, further, sir; are these municipal duties rendered to the State, or are they not rather performed by the people of the towns for their own benefit? The general treasury derives no supplies from all these contributions. If the towns maintain religious instruction, it is for the benefit of their own inhabitants. If they support schools, it is for the education of the children of their inhabitants; and if they maintain roads and bridges, it is also for their own convenience. And therefore, sir, although I repeat that for reasons of expediency, I am in favor of maintaining town representation, as far as it can be done with a proper regard to equality of representation, I entirely disagree to the notion, that every town has a *right*, which an al-

teration of the constitution cannot divest, if the general good require such alteration, to have a representative in the Legislature. The honorable member has declared that we are about to *disfranchise* corporations, and destroy chartered rights. He pronounces this system of representation an outrage, and declares that we are forging *chains and fetters* for the people of Massachusetts. "Chains and fetters!" This Convention of delegates, chosen by the people, within this month, and going back to the people, divested of all power within another month, yet occupying their span of time here, in forging chains and fetters for themselves and their constituents! "Chains and fetters!" A popular assembly of four hundred men, by combining to fabricate these manacles for the people, and nobody, but the honorable member from Worcester, with sagacity enough to detect the horrible conspiracy, or honesty enough to disclose it! "Chains and fetters!" An assembly most variously composed; men of all professions, and all parties; of different ages, habits and associations—all freely and recently chosen by their towns and districts; yet this assembly, in one short month, contriving to fetter and enslave itself and its constituents! Sir, there are some things too extravagant for the ornament and decoration of oratory; some things too excessive, even for the fictions of poetry; and I am persuaded that a little reflection would satisfy the honorable member, that when he speaks of this assembly as committing outrages on the rights of the people, and as forging chains and fetters for their subjugation, he does as great injustice to his own character as a correct and manly debater, as he does to the motives and the intelligence of this body.

I do not doubt, sir, that some inequality exists in the mode of representatives proposed by the committee. A precise and exact equality is not attainable, in any mode. Look to the gentleman's own proposition. By that, Essex, with twenty thousand inhabitants more than Worcester, would have twenty representatives less. Suffolk, which according to numbers would be entitled to twenty, would have, if I mistake not, eight or nine only. Whatever else, sir, this proposition may be a specimen of, it is hardly a specimen of equality. As to the house of representatives, my view of the subject is this. Under the present constitution the towns have all a right to send representatives to the Legislature, in a certain fixed proportion to their numbers. It has been found, that the full exercise of this right fills the house of representatives with too numerous a body. What then is to be done? Why, sir, the delegates of the towns are here assembled, to agree, mutually, on some reasonable mode of reduction. Now, sir, it is not for one party to stand sternly on its right, and demand all the concession from another. As to right, all are equal. The right which *Hull* possesses to send one, is the same as the right of *Boston* to send fifty. Mutual concession and accommodation, therefore, can alone accomplish the purpose of our meeting. If Boston consents, instead of fifty, to send but twelve or fifteen, the small towns must consent, either to be united in the

choice of their representatives with other small towns, or to send a representative less frequently than every year; or to have an option to do one or the other of these, hereafter, as shall be found most convenient. This is what the report of the committee proposes, and, as far as we have yet learned, a great majority of the delegates from small towns approve the plan. I am willing, therefore, to vote for this part of the report of the committee; thinking it as just and fair a representation, and as much reduced in point of numbers, as can be reasonably hoped for, without giving up entirely the system of representation by towns. It is to be considered also, that according to the report of the committee, the pay of the members is to be out of the public treasury. Every body must see how this will operate on the large towns. Boston, for example, with its twelve or fourteen members, will pay for fifty. Be it so; it is incident to its property, and not at all an injustice, if proper weight be given to that property, and proper provision be made for its security.

To recur again to the subject of the senate—there is one remark, made by gentlemen on the other side, of which I wish to take notice. It is said, that if the principle of representation in the senate by property be correct, it ought to be carried through; whereas it is limited and restrained by a provision that no district shall be entitled to more than six senators. But this is a prohibition on the making of great districts, generally; not merely a limitation of the effect of the property principle. It prevents great districts from being made where the valuation is small, as well as where it is large. Were it not for this, or some similar prohibition, Worcester and Hampshire might have been joined, under the present constitution, and have sent perhaps ten or twelve senators. The limitation is a general one, introduced for general purposes; and if, in a particular instance, it bears hard on any county, this should be regarded as an evil incident to a good and salutary rule, and ought to be, as I doubt not it will be, quietly borne.

I forbear, Mr. Chairman, to take notice of many minor objections to the report of the committee. The defence of that report, especially in its details, properly belongs to other and abler hands. My purpose in addressing you was simply to consider the propriety of providing, in one branch of the Legislature, a real check upon the other. And as I look upon that principle to be of the highest practical importance, and as it has seemed to me that the doctrines contended for would go to subvert it, I hope I may be pardoned for detaining the committee so long.

Mr. DEARBORN rose in consequence of the allusions which had been made to his remarks by several gentlemen in the course of the debate. He thought he had been misapprehended in what he had said of the governments of Athens and Rome, and explained in relation to those subjects. In allusion to the remarks of the gentleman from Boston, who had last spoken, he said he agreed perfectly with him in the lucid view he had given of the effect of property

on government, and in all his views, except in relation to the basis of representation in the senate. In reply to Mr. PRESCOTT, who spoke yesterday, he said, that Mr. Jefferson, who had been quoted as an authority, had, after the publication of his Notes on Virginia, in some measure changed his opinion on the subject in question, and Mr. D. stated the principles on which Mr. Jefferson had drawn up the model of a constitution for Virginia.

Mr. MARTIN of Marblehead spoke in favor of the resolution. He would not consent to the compromise proposed by the resolutions of the select committee. He had no idea of bartering away the rights of his constituents, to have them ask him on his return home, Was this what our fathers and brothers fought for in the revolution? was this what your elder brother died for? He did not like a compromise, where one party received nothing in return for what it gave; and this would be the case with the county of Essex, according to the resolutions of the committee.

The question on the acceptance of the resolution was then taken, and decided in the negative—164 to 247.

The committee then rose, reported their disagreement to the resolution, and had leave to sit again on the other resolution.

The House adjourned.

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#### SATURDAY, DECEMBER 16.

The House met at 9 o'clock, and the journal of yesterday was read.

On motion of Mr. VARNUM of Dracut, the report of the standing committee on the declaration of rights, presented last Wednesday, was referred to a committee of the whole and assigned for Tuesday next at 9 o'clock.

Mr. PRESCOTT of Boston offered the following resolutions, viz.:

*Resolved*, That it is proper and expedient so to alter the constitution, as to provide, that when any two towns containing less than 1200 inhabitants, or any towns now united, or town and district now united, for the purpose of choosing a representative, and another town containing less than 1200 inhabitants, shall prefer being united for the purpose of electing a representative together, to choosing one every other year separately, and shall apply to the Legislature to unite them for that purpose, the Legislature shall unite them accordingly, and the meetings for the election of their representatives shall be held in such towns alternately, beginning with the most populous, unless they agree to hold them otherwise, and such towns shall continue so united, until one of them shall increase to 1200 inhabitants.

*Resolved*, That it is proper and expedient so far to alter the Constitution, as to provide that each of the small towns, and of the towns and districts now united for the purpose of choosing a representative, which contain less than 1200 inhabitants, and which shall not hereafter be united to another town, shall be entitled to elect a representative every year in which a valuation of estates within the Commonwealth shall be settled, provided that the Legislature of that year, shall never appoint the year in which the next valuation shall be made.

These resolutions were referred to the committee of the whole on the senate, &c.

On motion of Mr. PRESCOTT the House went into committee of

the whole on the unfinished business of yesterday ; Mr. QUINCY in the chair.

The second, third and fourth resolutions of Mr. DEARBORN were taken up successively and negatived, without any discussion on the merits, being considered as depending on his first resolution, which was negatived yesterday.

The committee then proceeded to the consideration of the fourth resolution reported by the select committee, which had been passed over, and was as follows, viz.:

*Resolved*, That it is proper and expedient so to alter and amend the constitution as to provide, that the several counties in this Commonwealth shall be districts for the choice of senators, until the General Court shall alter the same—excepting that the counties of Hampshire, Hampden and Franklin, shall form one district for that purpose—and also that the counties of Barnstable, Nantucket and Dukes county, shall together form a district for the purpose, and that they shall be entitled to elect the following number of senators, viz.:—Suffolk, six—Essex, six—Middlesex, four—Worcester, five—Hampshire, Hampden and Franklin, four—Berkshire, two—Plymouth, two—Bristol, two—Norfolk, three—Barnstable, Nantucket and Dukes county, two.

Mr. DANA of Groton inquired whether Hampshire, Hampden and Franklin now form one district.

Mr. PRESCOTT replied that they do.

Mr. LAWRENCE of Groton said the select committee did not think proper to interfere with the business of the Legislature in regard to a division of this district, as next year there was to be a new valuation. The five senators which were added to thirty-one, the number which belonged to the counties in Massachusetts at the time of the separation of Maine, were apportioned among those counties which had the greatest fractions in the valuation. On another point he observed, that some gentlemen yesterday supposed there was no limitation of the several counties to six senators. This limitation was already in the constitution, and as the committee did not propose to make any alteration in this respect, it was unnecessary to include it in their report.

Mr. BLAKE of Boston wished some gentleman of the select committee to explain what was meant by the clause “until the General Court shall alter the same.” He had very little doubt on the subject himself, but some gentlemen thought these words gave power to the Legislature to form the districts so that some should have more than six senators.

Mr. PRESCOTT said the intention of the committee was to give the Legislature power to make new districts, but the provision in the constitution limiting a district to six senators, remained entire. If the taxable property varied in the several counties, the Legislature might apportion the senators anew, conforming to this limitation and not dividing any county for this purpose, as had been before provided. The resolution followed the phraseology of the constitution.

Mr. PARKER of Boston wished the resolution to be made more explicit, as one of the principal difficulties had arisen from the

clashing of the two provisions in the constitution. It was as much a violation of the constitution to give other counties more senators than they were entitled to by their valuation as it would be to give Suffolk more than six. He should wish a provision might be made, that the surplus valuation of any county should be apportioned among the other counties not entitled to choose six.

Mr. DANA thought it would be better to postpone the consideration of this resolution, until it should be settled in Convention what should be the number of senators; because if the number thirty-six should not be adopted, a new apportionment would be necessary. He objected to restricting the Legislature from making two or more districts out of one county. He should not, however, propose any specific amendment.

Mr. FREEMAN of Sandwich moved to amend the resolution, so that the several counties should be districts, excepting that Nantucket and Dukes should form one, for the choice of senators, to be apportioned according to population, and none but freeholders, should be entitled to vote for senators and none should be eligible but such as were seized of a freehold of the value of one thousand dollars. Mr. F. was going on to state his reasons, but was called to order, as the principle of apportioning on population had been once rejected by the committee.

The Chair decided that the gentleman was not in order, and upon an appeal to the committee the decision was confirmed.

Mr. PARKER of Boston moved to add to the resolution—"And if it shall so happen that any district shall, according to its valuation, be entitled to a greater number than six senators, the excess shall be apportioned upon any other district or districts, not entitled to six senators, in proportion to the public taxes paid by such district or districts."

After some slight discussion, the amendment was withdrawn by the mover.

The question being stated on the adoption of the resolution—

Mr. DANA said he had expected the report of the committee would be so altered, that the senate should hereafter consist of forty members. But the question could not be now arrived at—it had been already settled in committee of the whole, that the number should be thirty-six. If no amendment was made in the constitution, in this respect, the number would be forty. It would, therefore, be improper to accept this resolution, which makes an apportionment of thirty-six only. He should move, therefore, that the resolution should be passed over.

Mr. WILDE opposed the motion. He saw no advantage attending it. We had agreed to the resolution fixing the number at thirty-six, and if that decision was not altered, this resolution would be necessary. If that was changed in Convention, this might be so amended as to correspond with that decision.

Mr. BANISTER of Newburyport also opposed the motion, not because he was opposed to the proposition of the gentleman from

Groton, but because he thought it would tend to embarrass the proceedings. If the motion to fix the number of senators at forty should prevail in Convention, there would be no difficulty in afterwards making a corresponding alteration in this resolution.

Mr. DANA withdrew his motion.

The question recurred on the resolution, which was agreed to—210 to 118.

The resolution offered by Mr. PRESCOTT, authorizing the Legislature to unite towns entitled, according to the report of the select committee, to choose a representative only every other year, when they should request it, with authority to elect a representative every year, was then taken up.

Mr. PRESCOTT said it was provided, by one of the resolutions of the select committee, that the small towns containing less than 1200 inhabitants, should be divided into two classes, and entitled to choose representatives alternately. It had been suggested that there might be many towns so situated, that they would prefer being united together, with authority to choose a representative every year. He saw no objection to giving them the choice of such an arrangement. The effect on the house would be the same, if they chose jointly, as if they chose alternately. As, therefore, it could be no inconvenience to the public, and as it might make the system proposed more acceptable to the people of some towns, he had been induced to offer the resolution.

Mr. WARD moved to amend the resolution, by adding to it the words, "or until it shall be otherwise ordered by the Legislature." Mr. W. said he thought that very few towns would agree to unite, if, when the union was once formed, it was necessary that it should be perpetual. Circumstances might change, or jealousies might spring up between the towns, so as to make it extremely difficult for them to act in concert.

Mr. MARTIN hoped the motion would not prevail. He thought it would be very inconvenient to let the Legislature have the power to separate the towns whenever one of them should apply for it; there would be perpetual applications for that purpose.

Mr. PRESCOTT had the happiness to concur entirely with the gentleman from Marblehead.

Mr. WARD and Mr. HOAR of Concord supported the amendment.

Mr. HOYT of Deerfield inquired whether the amendment authorized the Legislature to act without a petition from the towns united.

Mr. WARD said he was willing to amend his amendment, by adding, "upon application of either of the towns," though he considered it unnecessary.

Mr. MARTIN said, as this had been compared to marriage, there should be the consent of both parties.

The CHAIRMAN said the gentleman was mistaken. There must be a mutual consent to the union, but not to the dissolution.

This amendment to the amendment was agreed to.



Mr. SIBLEY of Sutton suggested that there was an inaccuracy in the resolution. It should be, that each of the towns to be united should have less than 1200 inhabitants.

Mr. PRESCOTT assented, and wished the resolution might be altered accordingly.

Mr. NEWHALL of Lynnfield wished that it might be imperative on the Legislature to disunite the towns upon the application of either of the towns.

Mr. WEBSTER of Boston objected; for then a town, when it had the advantage in respect to sending a representative, might apply to be separated.

Mr. HORT wished it might be at the discretion of the Legislature to unite the towns, and moved to substitute "may" for "shall." It would be unreasonable to unite a town where the minority opposed to the union was very large.

Mr. FREEMAN of Sandwich said if there was a majority in both towns in favor of a union, the Legislature ought to unite them.

The question was taken for substituting "may" for "shall," and decided in the affirmative—130 to 112.

Mr. FLINT of Reading was afraid that if the power was given to the Legislature to unite and disunite at their discretion, it would be made to serve party purposes. He believed that it would produce more quiet and satisfaction to let each corporation exercise its own privileges separately. If ever the State should be placed in such an unfortunate situation as it had been in regard to political excitement, this discretion of the Legislature would most certainly be abused. For this reason he did not exactly like the resolution before the committee.

Mr. J. WELLES of Boston was pleased with the intention of the resolution generally, but thought the separation should be at the application of both, instead of either of the united towns. He therefore moved to strike out "either" in the amendment, and insert "both."

Mr. VARNUM and Mr. WEBSTER said this could not be done, as the amendment had been adopted.

Mr. WELLES then moved to reconsider the vote adopting the amendment.

Mr. WARD opposed the reconsideration. We were adopting a new system. Some of the towns might think they were disfranchised, if they were allowed to send a representative only every other year. Every facility should therefore be afforded to enable them to exercise their rights in the way they should prefer; and to save the rights and privileges of the small towns, he had introduced the amendment, giving the Legislature power to dissolve the union between two towns, if it should be found unprofitable. Now gentlemen thought the separation should be on the application of both towns. He thought it unjust to require this, because any town, which derived advantage from the connection, would of course oppose the separation.

Mr. CRANDON of Rochester inquired whether it was intended to let the towns be joined and disjoined, time after time; if so, the Legislature would have business enough on their hands.

Mr. WARD said it was not to be expected, that the Legislature would permit them to play at fast and loose without good reason. The Legislature would treat frivolous applications in a summary manner.

Mr. BALDWIN of Boston opposed the reconsideration.

Mr. LINCOLN of Worcester spoke in favor of reconsideration. The Legislature should not have discretion in the case; they would abuse it for party purposes. Make the provision imperative, and the towns will deliberate before they covet a connection. If, upon full consideration of the mutual advantages and disadvantages to arise, the towns choose to enter into a union, it ought to be for better or for worse. He should be opposed to a separation upon the application of both parties. If the Legislature, upon such an application as this, have any discretion, they will always look to the political effect.

Mr. WEBSTER said the gentleman had anticipated him, and more than anticipated him. He was of opinion that the Legislature should have a discretion with respect to uniting towns, but if a connection should be formed, it ought to continue forever; unless one of the towns should attain to 1200 inhabitants, when it might be said to have come of age and would of course be free by the constitution as proposed to be amended.

Mr. WARD said the remarks of gentlemen were founded upon analogies which did not exist. There was no resemblance between marriage and the union of towns. Marriage is entered into by the act of the parties themselves, and terminates by the death of one of them. In towns there would be a succession of persons who had no agency in the question of uniting. Gentlemen ought not to go upon the supposition of a time-serving policy of the Legislature; they should rather go upon the benefit small towns might derive from this connection and trust to the magnanimity of the Legislature.

Mr. BLAKE of Boston said that as to a union, there would be a mutual consent of course; but to require the consent of both towns to a dissolution, was making a dissolution impossible.

Mr. FLINT said he had an objection to the resolution in addition to the one he had before stated. The committee had adopted a resolution that the governor, lieutenant governor, senators and representatives should all be chosen on the second Monday of November. He asked how the inhabitants of two towns could, on the same day, meet in their respective towns, for the choice of governor, lieutenant governor and senators, and in one of the towns for the choice of a representative.

The CHAIRMAN said the gentleman was not in order, as the question was not upon the resolution, but upon the reconsideration of the vote adopting an amendment.

The question for reconsidering was then taken and determined in the affirmative—123 to 104.

Mr. LINCOLN moved to amend the amendment by striking out "of either."

Mr. BLAKE and Mr. FOSTER of Littleton opposed the motion. Mr. F. begged gentlemen from large towns to consider what would be the situation of small towns. The large town would not consent to the separation of the small one, any more than Boston to lose a senator.

MESSRS. HOYT, WELLES and HUBBARD expressed themselves in favor of a connection of the towns for a limited time, as for ten years or until a new census should be taken.

Mr. SULLIVAN of Boston hoped the motion of the gentleman from Worcester would prevail. He would leave as little to the discretion of the Legislature as possible, as they would abuse their discretion for party purposes. He would make it difficult for the towns to unite, and difficult for them to separate when united.

Mr. STURGIS of Boston did not see how the Legislature could abuse their discretion, as there would be the same number of representatives elected, whether one was chosen every year by the towns united, or by the separate towns alternately every other year.

Mr. S. A. WELLS of Boston thought a majority of both towns collectively should be required, otherwise the small town might control the larger, although the larger should have more than 1200 inhabitants.

The CHAIRMAN said the gentleman mistook. When the inhabitants of one of the towns amount to 1200, it separates, of course.

The question was taken on Mr. LINCOLN's motion and lost.

Mr. PARKER said he was much struck by the remark made by the gentleman from Reading (Mr. FLINT). It often happened that a man of good common sense and strong natural intellect, discovers what has escaped the vigilance of men of technical accuracy. He said it would be unreasonable to require electors to perform the double duty of voting in their own town, and in another, on the same day; he had therefore prepared an amendment to remove the difficulty.

The CHAIRMAN said the gentleman was out of order, the question not being upon the resolution, but the amendment.

Mr. HUBBARD moved to amend the amendment of Mr. WARD, by adding, "Provided however that no such application shall be sustained by the Legislature more than once in ten years, unless both towns unite in such application, except in the year succeeding the taking of the census."

Mr. PAIGE of Hardwick moved to pass over this resolution and take up the other one introduced by Mr. PRESCOTT. The small towns would prefer to have the other acted upon first, because if the present resolution were adopted, it might be thought that the other was unnecessary.

Mr. PAIGE's motion was negatived—107 to 116.

Mr. HUBBARD's amendment was adopted—160 to 62.

The question was now upon the amendment as amended.

Mr. NICHOLS of South Reading opposed it. He said there never would be any application except for party purposes. The large town might be in the power of the smaller, on account of unanimity in the small town and division in political sentiment in the large one, and thus a permanent majority would be secured. He belonged to a small town and did not wish for this privilege.

On motion of Mr. LINCOLN the committee rose, reported progress, and had leave to sit again.

On motion of Mr. LINCOLN, it was ordered that the resolution, with the amendments, should be printed.

Leave of absence was given to Mr. CLAPP of Easthampton on account of sickness in his family.

Ordered, that when the House adjourns, it shall adjourn to Monday, at 10 o'clock.

The House then adjourned.

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MONDAY, DECEMBER 18.

The House met at 10 o'clock and the journal of Saturday was read.

On motion of Mr. VARNUM of Dracut, the second report of the standing committee on the senate, &c., relating to elections, as reported by the committee of the whole on the senate, &c., was taken up in conformity to an order passed on Wednesday last, and the two first resolutions, which propose to alter the constitution so as to provide that the meetings in towns and districts for the election of governor and lieutenant governor, senators and representatives, shall be on the same day in each year, viz., the second Monday in November, and may be continued from day to day not exceeding three days, for the purpose of choosing representatives, were read a first time, and to-morrow at 9 o'clock, was assigned for a second reading.

The third and fourth resolutions, that it is not expedient to provide in the constitution that the meetings for the election of electors of president and vice president of the United States and representatives in congress, and for the election of town or county officers, shall be on the same day as those for the election of governor, lieutenant governor, senators and representatives in the Legislature of this Commonwealth, were read and agreed to; it not being necessary to give them a second reading, as they propose no alteration in the constitution.

The House were proceeding to read, the first time, the report of the standing committee on the subject of oaths, subscriptions, &c., as reported by the committee of the whole, to whom it had been referred.

Mr. TUCKERMAN of Chelsea said, if it was in order, he should move a resolution proposing that the governor, lieutenant governor,

senators and representatives should, before they entered upon the duties of their office, make the declaration,

"I, A. B., do believe in the truth of the Christian religion."

Mr. WEBSTER said that as there were to be but two readings of the resolutions reported by the committees of the whole, the second should be after they were engrossed. It would therefore be proper to have amendments made at the first reading. He wished the reports already made, might lie on the table, until other subjects had passed through a committee of the whole.

Mr. HUBBARD of Boston moved that the reports lie on the table. The motion was agreed to.

Leave of absence was granted to Mr. ADAMS of Quincy on account of indisposition, and to Mr. BAYLIES of Wellington on account of ill health.

On motion of Mr. PRESCOTT of Boston the House went into committee of the whole on the unfinished business of Saturday, Mr. QUINCY in the chair.

The question before the committee was upon Mr. WARD's amendment, as amended, of the resolution introduced by Mr. PRESCOTT, providing for uniting towns, containing each less than 1200 inhabitants.

Mr. WEBSTER wished that gentlemen representing small towns would express their opinions in respect to the desire of the small towns to be united, as his vote would be governed by the sense of the small towns.

Messrs. GRAY of Somerset, FOX of Berkley, LONGLEY of Bolton, BOYLSTON of Princeton, BANGS of Hawley, and one other member from a small town, thought the small towns would not avail themselves of the liberty of uniting.

Messrs. BALDWIN of Egremont and LAMSON of Hamilton, thought the small towns might like to have the privilege of uniting and separating just as they could agree, without any act of the Legislature.

Mr. DOANE of Cohasset said if the other resolution, for enabling every town to be represented on the year when the valuation is returned, should be adopted, the small towns would not wish for the privilege proposed by this resolution.

Messrs. HAZARD of Hancock and TILDEN of Hanson, were opposed to the system recommended by the standing committee, and to this resolution in consequence.

The question was taken upon the amendment as amended, and decided in the negative. The resolution itself was then rejected.

The committee then proceeded to the discussion of the other resolution introduced by Mr. PRESCOTT, which, after striking out a clause having reference to the resolution just rejected, was as follows, viz.:

*Resolved*, That it is proper and expedient so far to alter the constitution as to provide that each of the small towns, and of the towns and districts now united, for the purpose of choosing a representative, which contain less than 1200 inhabitants, shall be entitled to elect a representative every year in which a valuation of estate within this Commonwealth shall be settled, provided that the Legislature of that year shall never appoint the year in which the next valuation shall be made.

Mr. S. PORTER of Hadley moved to amend by adding—

*Provided*, that any two adjoining towns, each containing less than 1200 inhabitants, being in the same class, and being desirous of belonging to different classes, shall, upon application to the General Court for that purpose, be so classed, and ever afterwards send one representative every other year, until one of them shall by its numbers, agreeably to the provisions of this constitution, be entitled to send one every year.

The amendment was adopted—107 to 103.

The question recurring on the resolution as amended,

Mr. DWIGHT of Springfield opposed it. It appeared to him that the large towns gave up more than their proportion in the system recommended by the standing committee. They felt the power of the reason urged in favor of the measure—that the house of representatives was unwieldy—and they were willing to make great sacrifices. He thought they had given up enough; if this resolution prevails, the same difficulty will recur, which it was the object of the committee to guard against. The house would have an increase of seventy members on the year of settling a valuation. He could see no reason for the small towns having more than a fair representation when important measures were to be acted upon; the old system had better be retained.

Mr. STOWELL of Peru said he came from a small town. The alterations in the constitution in respect to the house of representatives were those which would be most felt by the community. The reduction in the number of representatives must be founded on a mutual concession of rights. He considered the large towns entitled to a representation every year, and they would not be deprived by the arrangement proposed; and he considered it no more than equal, that the small towns should be represented whenever there was a valuation; they would have to pay every year when they were not represented.

Mr. LAWRENCE of Groton said every town would be endeavoring to throw the burden off itself when the valuation was settled, and he thought the small towns ought to be heard as well as the large ones.

Mr. APTHORP of Boston did not conceive that the small towns gave up the right of being represented.

Mr. STOWELL said the small towns did in fact give up a portion of their representation. If two towns were classed, the largest sends the first year. It may be five miles from the small town. What representation, he asked, has the small town this year? He hoped something like the amendment of the gentleman from Hadley, would prevail.

The resolution was adopted, 178 to 84.

The committee then took up Mr. LINCOLN's resolutions proposing that every town should send one representative; towns of 3000 inhabitants, two; of 6500, three; and so on, adding 500 to the last increasing ratio. After some debate upon the propriety of discussing them in the committee which had already adopted resolutions repugnant to them, they were negatived, with an understanding that they would be brought forward again in convention.

The resolution offered by Mr. LYMAN, for dividing the Commonwealth into districts, for the choice of representatives, was taken up.

Mr. PICKMAN said that he was decidedly opposed to the system of representation reported by the select committee, and in favor of that proposed by this resolution. He did not wish, however, to urge the committee to debate the subject at present, but gave notice that when the report of the select committee came before the Convention, he should move to amend it by substituting the proposition contained in this resolution. The question on the resolution was then taken, and passed in the negative.

Mr. NICHOLS's resolution, providing that no pecuniary qualification should be required for senators or representatives, was taken up.

Mr. NICHOLS said he was willing that it should be negatived in the committee, without debate, that he might renew it in the Convention, after another resolution of similar import, had been discussed. The question was then taken on the resolution, and decided in the negative. The committee rose, and reported their agreement to the resolutions offered by the select committee, and one other resolution, and their disagreement to the other resolutions committed to them.

On motion of Mr. BLAKE, the Convention went into committee of the whole, on that part of the constitution relating to the lieutenant governor and council : Mr. WEBSTER in the chair.

The CHAIRMAN stated that the subjects referred to the committee were the report of the select committee, which had been recommit-  
ted, and several independent resolutions relating to the council.

The subject first taken up, was the resolution offered by Mr. DEARBORN, so to amend the constitution, that that part of it which relates to the council, shall be inoperative.

Mr. DEARBORN said, that when the State was a colony, and the governor was appointed by the king, to whom only he was responsible, it was very proper that he should be surrounded by a council chosen by the people, who should have a control over his measures. Such a council had existed under the colonial government, and besides having a negative on the appointments of the governor and the proper powers of a council, they acted as a branch of the Legislature, and had a negative on the proceedings of the house of representatives. Under our constitution, where the governor was annually chosen by the people, responsible to them, and liable to impeachment for misconduct, such a body was not necessary. That part of their duties which consisted of approving or negativing the nominations of the governor, he proposed to transfer to the senate. The other duties, he thought, could be better performed by proper officers, appointed for the purpose. The duty of examining the returns of votes, could be performed by the secretary and his clerks—the military business, by the governor, adjutant-general, and quarter-master general. A part of the duties which had devolved on the council, were purely legislative, and might be more satisfactorily performed by the Legislature. There were but seven or eight

of the states of the Union which had any council. In the government of the United States, no difficulty had been experienced from devolving on the president the performance of all executive duties, with the advice of his cabinet ministers; the senate having the power of negating appointments. In this State, the duties of the governor were clearly pointed out, and the person elected to the office was of such an exalted character, that he might be confided in to perform those duties faithfully. He might perform them without a council, more to his own satisfaction, and as much to that of the people. By dispensing with the council, there would be an annual saving to the State, in the expenses of government, of several thousand dollars.

Mr. STURGIS of Boston opposed the resolution. He thought it was incumbent on any gentleman proposing a material amendment to the constitution, to show that the experience of forty years had pointed out some serious inconvenience, or that his proposition was decidedly an improvement, and calculated to give facility to the operations of government. The gentleman from Roxbury had supported his resolution on three grounds;—that it would facilitate the operations of the executive department, it would increase the sense of responsibility in the governor, and would be more economical. Mr. S. did not agree with him on either of these grounds. It will not increase the responsibility of the executive. The governor must obtain information from some source. He now relies on the council, a body of intelligent men, of distinguished character, who come from the different parts of the State, and feel the responsibility of their situations. Each feels a particular responsibility to the people of that part of the country from which he comes. They look immediately to him as the adviser in cases where they are particularly interested. He did not think it would be an economical measure to abolish the council. It would cost the State four times as much to have the duties performed in any other way. If gentlemen would look to the nature of those duties, they would perceive the utter impossibility of their being performed by one man. Among these duties, besides the acting upon all executive appointments, were the settlement of the accounts of the county treasurers, the superintendence of the State Prison, particularly the acting upon applications for pardon, which engage the time and attention of a committee of the council for nearly a third of the year—the examining of returns of votes, a duty which he thought ought not to devolve on the secretary—the appointment of pilots and regulation of their fees, and many other duties, part of which, if not performed by the council, would necessarily devolve on the Legislature; and other parts which the governor alone could not perform. It might be necessary to appoint a board of finance, consisting of persons of high standing, to whom salaries must be paid. Gentlemen are induced to accept a seat in the council, by the honor of the appointment, who would not be, for any pecuniary consideration. The duties in relation to the State Prison could be in no other way so



well performed as by a committee of the council. They were of a responsible nature and demanded much time and attention. It was possible the military business might be well performed if left entirely to the governor, and the adjutant and quarter-master generals, but there could be no harm in having a committee of the council, including men of distinguished military talents and information, to superintend those departments. He was satisfied that the duties which devolve on the council, had been heretofore well performed, and that it could not be in any other way done so economically.

Mr. PARKER of Boston spoke against the resolution. Although in theory it was held to be important that the executive should be single, it was yet found necessary to depart from the principle in some measure in practice. In the British government, the king is obliged to consult the ministers, and they are made responsible for the measures of the executive. The president of the United States is obliged to gather round him his cabinet. The governor must have advice; he must either consult those whom the people place around him, and in whom they confide, or those whom he confides in. If we were now forming a new constitution, he should prefer placing round the governor a council selected by the people. There are now particular duties which they have been accustomed to perform, and which, if the office is to be abolished, it would be necessary to commit to other hands. It would be necessary to have a comptroller of the treasury—additional military officers—a board of pardons, and perhaps other officers, with competent salaries, the expense of which would be much greater than that of the council.

Mr. PICKMAN said that, as regarded the responsibility of the governor, that object was as fully secured now, as if there were no council. The governor is responsible for all appointments, because he has the sole power of nominating. The council are also responsible, because no appointment can be made without their approbation. He thought that in all the states of the Union, there was no one in which the executive was more wisely constituted than in this Commonwealth.

The question was then taken on the resolution, and decided in the negative, by a large majority.

The second resolution, providing that the lieutenant governor shall be president of the senate, &c., was taken up, and negatived.

The third resolution also passed in the negative.

The report of the select committee was then taken up. The chairman stated that the committee had agreed to several of the resolutions in the report, with amendments, but the Convention having recommitted the subject to a committee of the whole, without having ratified the proceedings of the first committee, the amendments agreed to, had fallen, and the report must be taken up, *de novo*.

The resolutions having been read,

Mr. PICKMAN, chairman of the select committee, rose to state the views of the committee. He said that they had proposed to make no alteration in relation to the office of lieutenant governor, except

to put the qualification on the same footing which should be agreed to in relation to the governor. They had thought the office of lieutenant governor important—that the person provided to fill the executive chair, in case of vacancy by the death, sickness, or absence of the governor, should be chosen by the people, and should possess the same qualifications as the governor—that he should be united with the council, that being the best school to qualify him for the duties of governor. It sometimes happened, in consequence of the temporary absence of the governor, that, unless the lieutenant governor was able to act as chief magistrate, the business of the department would be necessarily suspended. There had been four instances since the adoption of the constitution, in which the duties of governor had devolved, for a considerable length of time, on the lieutenant governor, and had been performed to the acceptance of the public. He was clearly of opinion that the office of lieutenant governor was necessary, and that it was much the best mode of providing for a vacancy, which is always liable to occur. In relation to the council, the committee proposed to make no alteration, but such as should accommodate it to the present condition of the Commonwealth as it was affected by the separation. All the members of the committee thought that seven counsellors, instead of nine, would be now amply sufficient to perform the duties of the office. The next alteration which they proposed, was to dispense with the farce of electing counsellors from the senate, who were not expected to accept the appointment. It had been his opinion that it was not the intention of the framers of the constitution, that the persons chosen from the senate should decline the appointment and continue to hold their seats in the senate. But, on mature reflection, he was satisfied that this opinion was erroneous, and that the persons so elected ought to have the option of declining, and that in many cases it was their duty to decline. Otherwise it would give to the house of representatives the power entirely to control the senate, which could never have been the intention of the people in adopting the constitution. It had been the practice for fifteen or twenty years past, to elect persons from the senate, with the expectation that they would decline, and afterwards to choose the counsellors who were expected to act in that capacity, from the people at large. The constitution had wisely provided that this choice should be made in joint convention of the two houses of the Legislature. No persons in the community are so well qualified as they to make the choice. It was important that the council should be so constituted that they might be disposed to act in unison with the governor. The governor should not have the apology that he could not transact the business of his office in the manner which he preferred, because he was opposed by his council. Nor, on the other hand, should the council have such an apology. This harmony of opinions was likely to be obtained, when the council was chosen by the joint vote of the two houses of the Legislature. The committee therefore entirely approved the mode of election which

had prevailed under the constitution, for the last fifteen years. The amendment which they proposed, was only intended to make the constitution what it had been in effect under a long continued practice, which had been found salutary.

Mr. APTHORP moved to amend the first resolution, in the manner which had been formerly agreed to by the committee of the whole, viz., to provide that the qualifications of the lieutenant governor shall be the same as are required for the governor.

The amendment was agreed to, and the resolution, as amended, adopted.

The second resolution, which fixes the number of counsellors at seven, and the quorum at four, was taken up, and agreed to.

The third resolution was taken up, and Mr. BLAKE moved to amend it, by striking out the substantial part of it, and inserting a provision that, besides the persons chosen for senators, there shall be annually chosen by the people, in each senatorial district, an equal number of persons to be returned as counsellors. And from the persons thus returned, the two houses in convention shall elect certain persons to be counsellors.

On motion of Mr. VARNUM, the committee rose, reported progress, and had leave to sit again.

Mr. SIBLEY of Sutton moved that when the House adjourned, they should adjourn to this afternoon, at half-past 3 o'clock. He thought they might spend the afternoon profitably, at least as much so as they had this forenoon. He afterwards withdrew his motion, and it was moved, that after this day, except on Saturdays, there should be two sessions each day. Agreed to, 158 to 107.

Mr. STURGIS gave notice that he should tomorrow move for a reconsideration of this vote. A motion to print the resolution offered by Mr. Blake was negatived.

Adjourned.

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#### TUESDAY, DECEMBER 19.

The House met at 9 o'clock, and attended prayers offered by the Rev. Mr. Jenks. The journal of yesterday was then read.

Mr. DANA of Groton introduced a resolution proposing to abolish the office of solicitor general, after a vacancy shall take place in that office.

Referred to a committee of the whole, and assigned for tomorrow, at 9 o'clock.

The first resolution of the second report of the standing committee on the senate, &c., proposing to alter the constitution so as to provide that the meetings of towns and districts for the choice of governor, lieutenant governor, senators, and representatives, shall be held on the same day in each year, and that said meetings may be continued from day to day, not exceeding three days, for the purpose of completing the choice of representatives, received a second reading.

Mr. HUBBARD of Boston opposed the resolution. He thought it was useful to have the election of representatives on a different day from that on which the other officers of the government were elected, in order to represent the different state of popular feeling which might take place.

The resolution passed.

The second resolution fixes the day for holding these meetings, viz., the second Monday of November.

Mr. LINCOLN of Boston moved to substitute Wednesday for Monday.

The motion was negatived, after a slight debate, in which Mr. LINCOLN supported it, and Messrs. QUINCY of Boston and FOSTER of Littleton opposed it.

Mr. FOX of Berkley moved to substitute October for November.

The motion was negatived, and the resolution passed.

The Convention then went into committee of the whole on that part of the constitution relating to the council, Mr. WEBSTER in the chair.

The amendment offered yesterday by Mr. BLAKE, on the third resolution of the select committee, being read,

Mr. BLAKE rose to support the amendment. He said, that in speaking on all questions on which he had risen in the Convention, he had endeavored to concentrate his remarks, and occupy as little time as possible. He thought he had not been in fault for the great consumption of the time of the Convention, on the subject now before the committee. In relation to the proposition which he had now submitted, he was not tenacious about its details. Give him the principle that in elections of counsellors they should be chosen by the people, and he was indifferent in what manner it was modified. This was the only principle which he considered essential. The proposition to elect in districts, as well as that to restore the mode provided by the constitution, had been rejected. The proposition to choose by a general ticket, to be sure, had passed the committee of the whole, but by so small a majority that he was willing to consider it as rejected. The only choice, therefore, was between the proposition which he had made, and that of electing by the members of the Legislature. The latter mode he considered a direct violation of a fundamental principle of the constitution. The practice which had prevailed for the last fifteen years had been productive of two evils. It had deprived the people of their voice in the election of counsellors, and had increased the senate beyond the number originally intended. It had been argued, that by the usage of the last fifteen years, a practical construction had been given to the constitution, conforming to the mode proposed by the select committee. He contended that the practice had not been such as to authorize this inference. No senator or representative had ever pretended that they had a right to elect counsellors, without first making choice of those who had been returned by the people. But if the practice had been otherwise, no usage, no acquies-

cence in a custom in violation of the constitution, could deprive the people of their rights. It was argued in favor of the mode proposed by the select committee, that a choice by the representatives of the people, was a choice by the people. He contended that the maxim, *qui facit per alium facit per se*, though good in law, was not a sound principle in politics. It was argued that the mode of electing by the Legislature was the most convenient. On this principle, if a sound one, the people ought to be deprived of the power of making all elections. He proceeded to consider the other arguments that had been urged in favor of choosing by the Legislature, and the objections to the election by the people. The proposition of the select committee went to deprive the people of their voice in the election. For that reason he was not prepared to assent to it.

Mr. DUTTON of Boston said no subject had been so fruitful in projects as this relating to the council. There were three before the committee, besides the one reported by the select committee. The best argument for that of the select committee was, that all the other projects were full of inconveniences and difficulties. It was said to be a fundamental principle that the people should choose the counsellors; he did not understand this language. The people had as much a right to choose sheriffs, judges, &c. It was said that a choice of counsellors, who form a part of the executive, by the Legislature, was an intermingling of the powers of the distinct branches of government. It was no more so than that the judiciary should be appointed by the executive. The true principle was, that the different departments should exercise distinct powers. The right to change the mode was as clear as the right to make any other change in the constitution. The only question was as to the expediency. Was it convenient, and for the interests of the people, that the counsellors should be elected in the mode proposed in this amendment? It would be troublesome to vote for so many candidates, and difficult to agree in the selection of so many. Would gentlemen qualified for the office consent to be candidates, and submit their characters to public scrutiny, when, if elected by the people, they would have but one chance in five of obtaining the office, and twenty-nine out of thirty-six must be laid on the shelf? How would the candidates be selected? It must be either by the Legislature, in which case all the arguments would apply which have been urged against an election by the Legislature, or in some other mode liable to greater objections. In both cases, the boasted right of choice goes for nothing. He thought the plan proposed by the select committee recommended itself to the people. It was conformable to the practice under the constitution, and he was satisfied that practice was correct. He thought it preferable that the Legislature should choose from the people at large, rather than from a limited number. They would thus be able to select persons best qualified, and command a variety of talents suited to the different duties to be performed by the council. The only interest of the people was that they should have a good council. They

want good judges, but it does not follow that they must choose them. He was not accustomed to make professions about the people's rights. He would do everything for the people, but not everything by the people.

Mr. MORRISON was opposed to the resolution as it stood. He had offered a proposition which should provide for the election of one person by the people, to be returned from each senatorial district, out of which seven counsellors should be elected by the Legislature. This agreed, in substance, with the proposition before the committee, except in regard to the number of persons to be returned by the people. He was opposed to giving the Legislature so wide a range in their choice. He therefore moved to amend the resolution under consideration, by substituting that which he had before submitted.

Mr. BLAKE said he had before stated that he was tenacious only of the principle, and not anxious about the particular number of persons to be chosen by the people. He therefore withdrew his resolution to give place to that offered by the gentleman from Dorchester. The resolution offered by Mr. MORRISON was then read. It provides that there shall be annually chosen by the people of each senatorial district, one person to be returned to the General Court, out of whom the two branches by-joint ballot shall choose seven to be counsellors.

Mr. MORRISON contended that the practice which had prevailed was a violation of the constitution, and ought to be corrected. In what manner should it be done? It was a fundamental principle of a free government that the executive should be chosen by the people. This had been intended by the framers of the present constitution. They had no idea that the persons chosen by the people as counsellors and senators, selected by the Legislature as counsellors, would all decline. The principle could only be restored to the constitution by giving the choice to the people. He had preferred that this should be done by election in districts. But gentlemen did not like this mode, and had rejected the proposition for that object. It was necessary, therefore, to resort to some other mode, and this he considered the best. It restored a fundamental principle of the constitution, and for that reason he was in favor of it.

Mr. THORNDIKE hoped that in deciding upon this amendment, they should decide upon all amendments to the proposition of the select committee. They appeared to him to be in substance the same thing. The question to be decided was, what was the best mode of selecting seven counsellors, so as to obtain men best qualified. He thought the mode which had been adhered to in practice under the constitution, was the best. Gentlemen had contended that it was liable to abuses. He had for many years had a seat in the Legislature, and he had seen no such abuses. It was the most simple, and he thought the most satisfactory mode. It was a mode in which men best qualified from every part of the Commonwealth could be obtained, and men most likely to meet the approbation of

the people. The people could judge and compare their opinions in no other way so well as through their representatives in the two branches of the Legislature. It was a power little likely to be abused. It was the first act performed by them after coming together from among their immediate constituents. If they did not consult the wishes of their constituents in the election of counsellors as well as in their other duties, they would not be again elected to their seats. This would give them a sufficient interest in consulting the wishes of the people. He hoped that the amendment would not prevail, and that the resolution reported by the select committee would pass without any amendment.

MR. PARKER of Boston said he respected the professions which he had heard of regard for the constitution, for he presumed they were sincere. But they did not all appear to him to be entirely consistent with the propositions which gentlemen had supported. One gentleman had brought forward a detailed scheme which he had supported by a long argument intended to show that his system was the best that could be presented. As soon as he sat down, however, he gave it up for another, different in principle as well as in its details. The gentleman from Dorchester had proposed that in each senatorial district one person should be chosen by the people, to be candidate for counsellor. Of these persons, who must be ten at least in number, seven only were to be chosen by the Legislature for counsellors; or if it should happen that seven only should be chosen by the people, they are to form the council. What is to become of the voice of the people in the other districts? Why give seven counties the voice of the people in the choice of counsellors, and give the Legislature the power to thwart the wishes of the people in the three other districts? It appeared to him to have only the semblance of giving the choice to the people, and in fact to deprive the Legislature of the power of choosing to the best advantage. The amendment first proposed he considered the best of the two, because it afforded the widest field for selection. But the proposition of the select committee was still better, because it gave the Legislature the whole Commonwealth to choose from. The gentleman from Dorchester had declared it to be his object to restore, in substance, the original plan of the constitution. Yet he had proposed to provide, that if a vacancy occurred while the Legislature were not in session, it was to be supplied by the governor and council. This was a material departure from the constitution—much greater than to give the members of the Legislature, delegated with authority for this very object, the power of choosing the council. This had been said to be a departure from the principles of a free government, and opposed to the wishes of the people. We had just had the example of Maine, brought up under our own constitution,—the child of republicanism in its strongest sense,—forming a constitution with a full sense of the people's rights, which contains the very provision for the choice of their council which is recommended by the select committee. This constitution had been

adopted by the people of that state by the immense majority of 24,000 votes in favor of it, and only 800 against it. In Virginia, once the ancient dominion, now the queen of republics, the governor was chosen by the two houses of the legislature. It was the same in several other states. He thought the only way to get rid of the embarrassment the committee were in, was to adopt the resolution reported by the select committee.

Mr. BOND said that the proposition before the committee was so perplexed, and attended with so many difficulties, that he thought that the gentleman who offered it would not himself vote for it, if he would look into all its consequences. The senatorial districts must be at least ten. From the persons returned by these districts, the Legislature were to select seven for counsellors. They might or might not be from different parts of the Commonwealth. If it happened that only seven were chosen, they were to form the counsel. In either case there might be no counsellor from either of the three great western districts. He proceeded to point out some other consequences that would result from the scheme, and the complexity of its details. The gentleman had observed that there had never been a failure in the choice of senators. This he apprehended was a great mistake. There had been a failure of election by the people, in some district or other, almost every year, and the deficiency had been supplied in the constitutional mode. He hoped the amendment would not be adopted, and that the resolution of the select committee would be adopted without amendment.

Mr. LINCOLN said that he would reply to the gentleman from Dorchester by the *argumentum ad hominem*; with that species of argument that gentleman was well acquainted. He had expressed a great regard for the voice of the people, and he had voted for an apportionment of the senate according to valuation—by that mode of apportionment there may be seven districts from which all the counsellors may be chosen, which shall yet contain but one third of the population of the Commonwealth.

Mr. MARTIN hoped the Convention were not prepared to give up all the rights of the people. According to the argument of the gentleman from Boston, it might be proved, that the people had no right to choose governor and senators. When we were discussing the resolution about representatives the delegates from the small towns were called upon to give their opinions. They all came round and looked like lambs, ready for the slaughter. If those 148 towns were illegitimate, let us say so. If they are not, let us give them a voice in the choice of counsellors. He quoted the opinion of the gentleman from Quincy, to prove that it was the intention of the framers of the constitution that the counsellors chosen from the senate, should accept the appointment. He said that he considered the report of the committee was wrong, and he should vote against it, as long as he could stand.

Mr. STURGIS said that if the amendment prevailed, it ought to be considered that the Legislature, in making their selection of coun-



sellors, would always prefer those of the same political opinion with the majority of the Legislature, and that those districts which returned persons of political opinions opposed to those of a majority of the Legislature, would never be represented in the council, provided there were enough returned of opposite opinions to make up the whole number.

Mr. DAWES of Boston. Mr. Chairman, it appears to me the subject has been exhausted, and I doubt whether any gentleman here can throw any light upon it. I rise, therefore, simply to call for the question, and that is my speech, sir.

Mr. FREEMAN of Sandwich observed that he was constrained to say he was opposed to the amendment. He regretted that so much time of the Convention had been wasted, upon this and other absurd propositions of the gentleman from Dorchester.

The CHAIRMAN called the gentleman to order.

Mr. FREEMAN said he stood corrected. He proceeded. The amendment offered by the gentleman from Boston (Mr. BLAKE) had his sanction, as it went to form a legion of honor, constituted by that great emperor, the people; but he should vote against the amendment now under consideration, as he agreed with the learned gentleman from Boston (Mr. PARKER), that it would not remedy the evil complained of, viz., an election by the Legislature.

Mr. AUSTIN of Boston was aware of the impatience of the committee, but he thought their time could not be better spent than in inquiring how they ought to vote on this important question. He did not approve entirely of the amendment of the gentleman from Dorchester, because a part of the districts would not be represented. If it should prevail, at a proper time he should move to make the number of counsellors as large as that of the senatorial districts. He did not care, however, so much about the particular arrangement, as about the principle, that the people should make the election. It was never suggested that the governor and lieutenant governor should not be chosen by the people, and he could see no reason why two-ninths of the executive should be chosen one way and seven-ninths in a different way. It had been said that if the people choose their representatives, and their representatives choose counsellors, the counsellors are chosen by the people. The same argument might apply to choosing the governor. Follow the argument out, and it proves absurd. It had never been proved that the agent will act in all respects like the principal. The majority of the Legislature would not, in many cases, have elected the same person for governor, whom they had thought necessary to nominate, in a legislative caucus, for the people to choose.

Mr. Austin mentioned the argument, which he said had not yet been answered, that the present mode of choosing counsellors was a commingling of the powers of the different branches of the government. He said this act of sovereignty, in the choice of counsellors, ought to be performed by the people themselves and not by their agents, and the contemporaneous exposition of the constitution

to which the practice had conformed for twenty-five years, ought to have great weight. It appeared by the records of the former convention, that a motion was made to give the Legislature power to choose at once from the people at large, and was negatived. This showed the practice of the last fifteen years was a departure from the intention of the framers of the constitution. He did not blame any party; it was rather to be wondered at that the passions of the day had not made greater rents in the garment of the State. Mr. A. urged some reasons in favor of having a diversity of opinions among the members at the council board. He complained of some remarks, made by a gentleman the other day, when he expressed similar sentiments on the subject before the committee, insinuating that he was making a popular appeal. He exclaimed against the baseness of attempting, in that assembly, to court popular favor, and said, that while he held a seat there, which was the first he had ever held in an assembly of that kind, and might, perhaps, be the last, he should endeavor to act with that consistency, which gives respect to error, and with that integrity which gives confidence to truth.

Mr. SIBLEY of Sutton said the amendment might be made a little more palatable to him. He moved to amend it by adding,

"Provided, nevertheless, that the Legislature shall not leave any district without a counsellor two years in succession."

This amendment was adopted.

The question recurred upon the amendment as amended.

Mr. FLINT of Reading said this proposition had been discussed in the select committee, and that of twenty-one in that committee, twenty were in favor of the resolution reported by the committee. The object of that resolution was to prevent the Legislature meeting twice in convention, to choose counsellors, where once would be sufficient. It was thought that a better council would be chosen by the Legislature than in any other way. He begged gentlemen to remember, that if all the propositions in respect to the council should be rejected, the constitution, nevertheless, would be sound; and he hoped, if the resolution of the select committee should not be adopted, that the constitution would remain as it is.

Mr. WHITTEMORE of West Cambridge was opposed to taking from the people the right of choosing counsellors. Gentlemen might as well say that the people were incapable of electing governor, lieutenant governor and senators, as that they are incapable of choosing counsellors. He had made in the select committee the same proposition which is now made by the gentleman from Dorchester, and the gentleman from Reading was mistaken in saying that twenty of the select committee were in favor of the resolution reported, as five were absent when it was agreed upon.

Mr. FLINT rose to explain, but Mr. DUTTON was on the floor.

Mr. DUTTON pointed out the operation of the proviso introduced by the gentleman from Sutton, and showed that it would not produce the effect intended. The original amendment gave the Legis-

lature power to interfere only in two cases, viz., when more than seven, and when less than seven counsellors were elected by the people. If the people chose only seven, those seven were to serve; and they might be chosen, time after time, from the same districts, leaving the other districts unrepresented for more than two years in succession.

The question was taken on Mr. MORTON's amendment as amended, and decided in the negative—201 to 183.

The question recurred on the third resolution of the select committee.

Mr. LELAND of Roxbury moved to amend the resolution by striking out the substantial part of it, and inserting the second and third resolutions formerly proposed by him, providing that the persons returned as counsellors and senators shall designate from their own body persons to act as counsellors, and that the persons so designated shall cease to act as senators, and the persons left shall constitute the senate. He said it was obvious that there was a great diversity of opinion respecting the most proper mode of electing counsellors. Various modes had been proposed, and all had been rejected but that offered by the select committee, and that which he had offered. There seemed to be no alternative but to adopt one of these two. He proceeded to consider what were the duties of the council. In five cases only which he stated, they had a negative on the acts of the governor—but in all other cases they acted only as his advisers—he might accept their advice if it was wise, or might reject it if he thought it foolish. It was a fundamental principle of republican governments, that powers which could be conveniently and understandingly exercised by the people, should be exercised by them directly. In the mode proposed by him there was no inconvenience, and if they could exercise their power understandingly in the choice of senators, they could do it with as much intelligence in the choice of counsellors. But it was said there would be an embarrassment from its not being known who were to be counsellors and who were to be senators. He saw no difficulty on this ground, for whoever was qualified for one office would be qualified for the other. It was admitted that the counsellors should come from different parts of the Commonwealth. How were they to be obtained? He thought it should be in a manner that would make it sure that the people of the part of the State from which they are selected should have confidence in them. This object would not be obtained if they were chosen by the Legislature. There should be persons from the different parts of the Commonwealth who would represent the opinions and wishes of the different parts. The minority as well as the majority should be represented. This mode would gain the object, without being liable to the objections which had been made to that of selecting by both branches of the Legislature. The senate being an even number, if it had a majority in favor of particular opinions, could always make the selection in such a manner as to preserve that majority in both bodies. There would also usually be a minority in both, and this he

considered the most beautiful feature of the scheme. The principle was substantially the same which prevails in the senate of the United States, which has a negative on the nominations of the president. The system continues the advantages of a popular scheme, and secures, before the choice is completed, the wisdom of a deliberative and select body.

Mr. SLOCUM of Dartmouth said he had listened with a great deal of attention to gentlemen who had spoken, and differed from them in a great many positions. He should now take his political text, and interlard a little Latin with it, as some other gentlemen had done, *vox populi vox Dei*. The voice of the people is the voice of God. This is the principle of the constitution. If we do not adopt the proposition before the committee, the people will lose their voice. There will be 140 towns that every other year will have no voice. Why should we curtail them of their rights? The constitution should be made congenial with the genius of the people. The people will examine it with a step as steady as time, and with an appetite as keen as death. He hoped the amendment would pass, and that it would accord with the genius of the people.

The question on Mr. LELAND's amendment was taken and decided in the negative—216 to 103.

The question recurring on the resolution reported by the select committee,

Mr. FOSTER said he should vote for the resolution, with an understanding, that in Convention he should endeavor to have the constitution remain as it is, in respect to the manner of choosing counsellors. That mode was the best, and the one now proposed was the next best. The constitution had been tried a great many years, and it had come out of the furnace like silver seven times tried.

Mr. HUBBARD said he should vote against the resolution, because he thought the constitution required no amendment in this respect. The gentlemen who wish the counsellors to be chosen by the people, and those who wish them to be chosen by the Legislature, have both their desire in the present mode; and if so much is said here about the people's rights, the same argument will be made a handle of, in the meetings of the people for acting upon the amendments proposed by this resolution.

Mr. LITTLE of Newbury spoke in favor of retaining the constitution as it is, and against the resolution.

The question was taken upon the resolution and decided in the affirmative—187 to 178.

The fourth resolution of the select committee, proposing that not more than one counsellor shall be chosen out of any one county, was adopted without debate.

The fifth resolution, respecting the time of making elections by the Legislature, was adopted in blank.

On motion of Mr. DANA the committee rose and reported its agreement to the resolutions of the select committee with an amendment to the first resolution, their disagreement to those offered by

Mr. DEARBORN ; that they had acted upon the other subjects committed to them in the form of amendments to the third resolution of the select committee, and they asked leave to be discharged from the further consideration of the subjects of those amendments.

The committee was discharged accordingly and the report was laid on the table.

Mr. STURGIS made a motion for a reconsideration of the vote passed yesterday for holding two sessions in a day. After a slight debate the vote was reconsidered—175 to 156.

Leave of absence was given to Mr. ELIHU SLOCUM of Dartmouth, on account of ill health.

The House adjourned.

### WEDNESDAY, DECEMBER 20.

The Convention met at 8 o'clock and attended prayers offered by the Rev. Mr. Jenks. The journal being read,

Mr. STARKWEATHER of Worthington moved that a committee be appointed to inquire what business now before the Convention or in committee the public interests requires should be done, and at what time an adjournment or rising of the Convention may take place.

The resolution was agreed to, and Messrs. PRESCOTT of Boston, STARKWEATHER of Worthington, PAIGE of Hardwick, HOAR of Concord, and DAVIS of Plymouth were appointed.

Mr. PHELPS of Chester offered the following as a substitute for the third article of the declaration of rights, viz. :

Although it is the indispensable duty of all rational creatures to worship and adore the great Creator, and in order to discharge this and other religious duties it is necessary that men frequently assemble together ; yet, every person being, individually, accountable to God, and to God only, for the discharge or the neglect of this and every other religious duty, the religion of every man, and the manner of discharging every religious duty, must be left to the reason and conscience of every man, and so must be exempt from the control or cognizance of civil government : therefore no man ought to be compelled to attend any religious worship, or to the erection or support of any place of worship, or to the maintenance of any ministry, *against his own free will and consent*. And no power shall or ought to be vested in, or assumed by, any civil authority, or magistrate, that shall, in any case, interfere with, or control the rights of conscience, in the free exercise of religious worship or discharge of religious duties.

*Provided always*, That no man or sect shall be allowed to disturb the public peace or molest others in the exercise of their religious rights or duties.

*Provided also*, That those religious societies that have heretofore been accustomed to support public religious worship, and their public teachers, by a tax on their members, shall be allowed to continue such practice or custom ; and every person now a member of such society shall continue so, until he shall direct otherwise by his written certificate filed in the town clerk's office ; but no other person shall hereafter be considered as belonging to such society, until he shall certify his desire to become a member of such society by writing, which writing shall be lodged with the clerk of said society.

Referred to the committee of the whole on the declaration of rights.

Mr. SALTONSTALL of Salem moved the following resolution, viz. :

That it is not expedient to make any alteration in the third article of the bill of rights, except to provide that the word "Christian" shall be substituted for the word "Protestant."

Referred to the same committee.

Mr. CHILDS of Pittsfield moved the following as a substitute for the third article of the declaration of rights, viz. :

As the happiness of a people and the good order and preservation of civil government essentially depend upon piety, religion and morality, and as these cannot be generally diffused through a community but by the institution of the public worship of God; and as it is the inalienable right of every man to render that worship in the mode most consistent with the dictates of his own conscience; no person shall by law be compelled to join, or support, nor be classed with, or associated to any congregation or religious society whatever. But every person now belonging to any religious society whether incorporated or unincorporated, shall be considered a member thereof until he shall have separated himself therefrom in the manner hereinafter provided.

And each and every society or denomination of Christians in this State, shall have and enjoy the same and equal powers, rights and privileges; and shall have power and authority to raise money for the support and maintenance of religious teachers of their respective denominations, and to build and repair houses of public worship, by a tax on the members of any such society only, to be laid by a major vote of the legal voters assembled at any society meeting warned and held according to law.

*Provided nevertheless,* That if any person shall choose to separate himself from the society or denomination to which he may belong, and shall join himself to another society of the same or a different denomination, he shall leave a written notice thereof with the clerk of such society, and shall thereupon be no longer liable for any further expenses which may be incurred by said society.

And every denomination of Christians demeaning themselves peaceably, and as good citizens of the Commonwealth, shall be equally under the protection of the law. And no subordination of any one sect or denomination to another, shall ever be established by law.

Referred to the committee of the whole on the declaration of rights.

*Declaration of Rights.*—On motion of Mr. BLAKE the Convention went into committee of the whole, on the report of the select committee to whom was referred the declaration of rights, Mr. VARNUM in the chair.

The report having been read,

Mr. BLAKE rose. He said that he was one of the select committee to whom was referred the interesting and important subject involved in the nine resolutions now before the committee of the whole, and in the absence of the chairman of the select committee, in consequence of severe indisposition, and at his request, he stood there, as his humble representative, to state his views, and those of the committee on this subject. He regretted extremely the absence of that gentleman. It was a subject in which he took great interest, and on which he would have thrown much light. The select committee were impressed with the great importance and with the embarrassments of the subject, and with the weighty consequences which might result from any rash alterations which might be made in this part of the constitution. They admired the soundness of the principles laid down in relation to the support of religious worship—principles which are applicable, not only to this community, but to every civilized community in the world, and also the manner in

which those principles were expressed. The language was so forcible, and the conclusions so irresistible that the committee were desirous rather to vindicate the alterations which they had proposed, than to apologize for not offering further alterations. He would first go over, briefly, the six or seven immaterial subjects which the committee had recommended to the attention of the Convention, and afterwards proceed to the three principal propositions which the committee had submitted. The first resolution proposes to alter the word "subject," in the several places where it occurs in this part of the constitution, to "citizen" or "person." This alteration had been proposed, under the idea that the constitution was to be proposed in a new draft, and that in that case the alteration would be proper. In the fifth resolution a slight change is proposed in relation to the manner of making defence in criminal cases. It was thought proper to extend to the person accused the right of being heard by himself *and* his counsel, instead of by himself *or* his counsel. In the sixth resolution they had proposed to make an alteration in the article relating to the right of maintaining armies, so that it should conform to the constitution of the United States. Although, whatever in the constitution is repugnant to that of the United States was *ipso facto* repealed, by the adoption of the latter, it was nevertheless proper, if the instrument was to be drafted anew, that it should be made to conform in its terms to what is its legal effect. The alterations specified in the seventh, eighth and ninth resolutions were proposed with the same view, and for the same object. They were all proposed on the supposition that the constitution would be offered to the people in a new draft, and if that course was not to be adopted they were of little consequence. He next proceeded to consider the second, third and fourth resolutions, which propose amendments in the second and third articles of the declaration of rights, relating to the maintenance of public worship. The first consideration which presented itself was, that these articles do not contain a grant, but a restraint of power. Those, therefore, who propose to expunge them, do not consider the effect of such a measure. They restrain the power of the Legislature in relation to religious subjects. There is another article that empowers the Legislature to make, ordain and establish all manner of wholesome and reasonable laws, as they shall judge to be for the good and welfare of the Commonwealth. This power, without any restraint in relation to matters of religion, would enable them to give a code of laws for religious worship, without regard to the rights and opinions of individuals. It seemed to a majority of the committee, that of all subjects which could be imagined, that of public worship was one which most required to be provided for in the constitution. There was provision for securing the right of trial by jury—the freedom of the press—the support of literature—and there was no reason for omitting to provide for the support of public worship and religious instruction. The reason of the third article was unanswerable. "As the happiness of the people and the good order and preservation of civil gov-

ernment essentially depend upon piety, religion and morality ; and as these cannot be generally diffused through the community but by the institution of a public worship of God and of public instructions in piety, religion and morality ; therefore the people of the Commonwealth have a right to invest the Legislature with power to require towns, parishes and precincts to make suitable provision for the institution of the public worship of God." The principle was laid down in so forcible and irresistible a manner, that no one could deny its truth. No gentleman of the committee questioned the correctness of either of these principles. It seemed as if the position was hardly broad enough. Instead of saying that the happiness of a people essentially depends on piety, religion, and morality, it might be insisted that without them there could be no happiness in any community on earth or in heaven. If it was true that religion and morality were essential to the happiness of a people, and the good order and preservation of government, it was the right and duty of the people, in laying the foundations of their government, to deal with them in such a manner as would secure their influence. The second proposition was, that the institution and support of public worship were necessary for the diffusion of piety, religion and morality. If any worship was necessary to the good order and happiness of a community, it must be public worship. The worship of the cell and the cloister had nothing to do with society. The third proposition was an inference from the other two—it is therefore the right and duty of the people to invest the Legislature with power to make provision for the support of public worship. Mr. B. asked if the conclusion was not such an one as every gentleman must draw from the premises. It was however provided in other parts of the instrument that every individual should be allowed to worship according to the dictates of his own conscience, and all that was proposed, was, that every individual should be required to contribute in some form or other towards the support of public worship. Some gentlemen of the committee did question the correctness of the conclusion drawn by the framers of the constitution. They argued that religion would take care of itself, and therefore everything might be safely left to each individual to give it that support which he might see fit. But a majority of the committee were clearly of opinion that some legal provision for the support of public worship was *necessary*. But if there was any subject in relation to which there should be an injunction on all to contribute their aid, this merited the highest place ; in relation to all other institutions—courts of justice, schools, highways, &c.—it was admitted that every individual should be compelled to contribute towards their support. If religious institutions should be left to the voluntary support of individuals, it should be so with all others. The only subject of material difference of opinion in the committee, was, how public worship might be supported, by enjoining the duty on towns and parishes ; and on the other hand the rights of conscience, which the committee were unanimously of opinion ought not to be invaded, should



be protected. A fourth resolution was designed to avoid this difficulty. It was the result of a compromise of opinions. The majority in favor of the report was not large. It was thought that there was a defect in this respect, in the provisions of the constitution; an individual, who was satisfied with the religious instructions provided by the town or parish, was nevertheless obliged to contribute to their support, unless he united himself to a society of some different sect. This difficulty was partially remedied by the statute of 1811. But there was some doubt whether a person was exempted from taxation in the parish to which he belonged, unless he joined a society of a different sect or denomination. It was proper that the provision should be clear, and not liable to misinterpretation, and made permanent by being incorporated in the constitution. It admitted of doubt, also, what formed a religious society. The committee had endeavored to remove all ambiguity on this point, by establishing a mode in which such society might be formed. Mr. B. said he had made these remarks in compliance with the request of the chairman of the select committee. There was another resolution respecting the clause which invests the Legislature with authority to enjoin attendance on public worship. This was considered to be a defect in the constitution and it was thought proper to annul it.

The first resolution, which proposes to strike out the word "subject" and insert "citizen" or "person" in the several places where it occurs in the declaration of rights, was taken into consideration.

Mr. FAY of Cambridge opposed the resolution. He said the committee had proposed the alteration on the supposition that the constitution was to be drafted anew. It had been determined that this should not be done. But he opposed the resolution on another ground. The word "subject" was the proper word. "Citizen" was a word of more limited meaning. The word *subject* comprehends every person who lives under any government; no other word was so technically accurate, and so applicable to the places where it occurs.

Mr. SAVAGE of Boston said that the word citizen was a very just and proper word. In the various places in which it was found in the constitution, the framers of this instrument had used the word *citizen*, when they spoke of persons, who were to enjoy certain rights; and *subject*, when they spoke of them as bound to perform duties. The latter word occurs eleven times in the constitution, and in several of them it cannot with propriety be changed for citizen or person. The declaration of rights contains an assertion of general principles. In several instances, where the word occurs, the passage is a translation from Magna Charta, and it could not with propriety be translated citizen. Nothing would be gained by a change of the phraseology. There was no pretence that it was unintelligible. The assertion of a principle, in old language, was as good as in new. It was an object to preserve the language, and keep it from changing. He quoted passages where the word could

not with propriety be changed, for example : "demeaning themselves peaceably and as good subjects," citizens was of too narrow meaning. It would not include foreigners, yet foreigners, demeaning themselves peaceably, should be entitled to the protection of the law ; change it to persons and it would make nonsense. He quoted other passages, and contended that in all of them the word subject was properly used, and that citizen was always used in the proper places.

Mr. AUSTIN of Charlestown hoped the resolution would be adopted. We were citizens of the United States and not subjects. Subject was a child of monarchy. This appeared from its etymology. Under the Roman commonwealth no person entitled to the rights of citizenship was considered a subject.

Mr. FREEMAN of Sandwich said he had considered the subject with some attention before the report of the committee, and since. He could see no reason for changing the language.

The question was taken on the resolution and decided in the negative, 127 to 208.

The second resolution was then taken up, which provides for such an amendment in the constitution that the part of it which invests the Legislature with the power to enjoin on individuals an attendance on public worship shall be considered as annulled.

Mr. FLINT opposed the resolution. If it was the duty of a part of the people to attend public worship it was the duty of the whole. The Legislature ought to have power to pass laws to compel the observance of the Sabbath, and a due attendance on public worship. It was for the benefit of society that they should have this power. He hoped this part of the constitution would not be struck out, but that it would be suffered to stand to the credit of our ancestors who placed it there ; and that it might go down to our children and posterity.

Mr. DAWES of Boston did not wish to be considered as answering the argument of the gentleman from Reading, for he had not the pleasure of hearing it. But he wished to make a few remarks of his own. This part of the third article was not a favorite of his. It appeared to him to be very harmless, but though it could never do any injury, he did not like to see it in the constitution, because it could never do any good. Similar laws had done no good in England. He quoted several British statutes to show the origin of the provision, none of which, as far as he could learn, could ever be carried into effect. The reason was obvious. The person accused had only to plead conscience, and the civil arm could not reach him.

Mr. HUBBARD of Boston thought it a subject which deserved some reflection. If the passage in question was a dead letter as had been contended, it would do no harm. It was not consistent with the professions which gentlemen had made, to strike it out unless experience had shown that it did some injury. The language is not imperative. It provides only that the Legislature shall have the power, but does not require that they shall exercise it. Do we subject the

people to any inconvenience by giving the Legislature a right to pass laws of the description mentioned? Gentlemen say that the Legislature ought to have power to provide for the support of public worship. It did not seem wise to give the right to compel the people to support public worship, and not to give the right to compel attendance. It was a power which might with the same propriety be granted. If it was not necessary that the Legislature should possess the power in the present state of society, it was impossible to say that thirty years hence the prevalence of immorality and vice might not be such as to make it extremely desirable. The authority being now expressly granted if that was struck out of the constitution, the inference would be that the Legislature did not possess the power. He held, if we gave the Legislature power to make laws it was our bounden duty to give power to carry them into effect. He was therefore against the resolution.

Mr. NELSON of Malden was in the habit of considering religion as a matter between God and the individual. When any one makes up his mind that it is his duty to worship his Creator he decides also on the manner in which it is proper to worship him. He cannot delegate the right of doing this to a legislature. He had no thought when he was choosing a representative, that he was choosing a man to legislate about matters of religion. He had already settled about that. He questioned the right of the people to invest the Legislature with power to authorize and require towns and parishes to make provision for the support of teachers of religion and morality. Mr. NELSON was here called to order.

The CHAIRMAN said that if he was alluding to the other resolution merely for the purpose of argument, and with the view of illustrating his ideas on the second resolution, he was in order, but it was not in order now to debate the third resolution.

Mr. NELSON sat down.

Mr. WILLIAMS of Beverly spoke in favor of the resolution. He did not think the clause in the constitution could be enforced, and if it could, it was contrary to the spirit of our religion.

The question was then taken on the resolution and it was agreed to—296 to 29.

Mr. SALTONSTALL moved to amend the report by striking out the third and fourth resolutions, and substituting a resolution declaring that it is not expedient to make any further amendment to the third article of the declaration of rights than to substitute the word "Christian" for "Protestant," and also to provide that real estate shall be taxed for the support of public worship in the town, parish or precinct in which it shall be situated.

Mr. HOAR of Concord said it appeared to him, that the amendment proposed by the gentleman from Salem, must necessarily bring the whole subject of the third article into discussion. If it should be adopted, it would show that the committee were in favor of the article as it now stands, in preference to the substitution proposed by the select committee, or by the gentleman from Chester, or from

Pittsfield, and to any other which may be offered. He was desirous that the present amendment might be adopted. He was on the select committee, but did not vote with the majority in reporting these resolutions. If they were wrong, therefore, he was not responsible for their defects, and if right, he was entitled to no part of the credit. He considered the alteration proposed by the report of the committee to be in substance pernicious. It was going to change one of the fundamental principles of our government. If there was in our constitution one principle more than another on which the public happiness and welfare depended, and which was entitled to greater favor, he thought it was this; and it was here peculiarly proper to call on gentlemen for an application of the rule so often brought forward, that before any principle in the constitution was changed, it ought to be shown clearly and decisively that experience had proved it capable of producing an ill effect on the community. If this was acknowledged to be an important and an operative principle and not a dead letter, and if the effect produced by it was not a bad one, but the contrary, it ought to be retained. He was unwilling to destroy the effect of this principle. We had had experience of its beneficial operation, not for forty years only, but for more than a century; and he would not exchange this experience for any theory however wise in appearance. Theory might deceive, but experience could not. And if any experience was useful, that of the particular community for which the constitution was intended, was to be preferred. Although other countries may have been able to do without this principle, it by no means followed that it would do no good here. He knew that a distinguished individual in Great Britain had professed his ability to make constitutions and laws for all latitudes, and all habits and manners that could be named; he should however give more credit to our own experience. If gentlemen who wish a change should show the operation of the third article to be prejudicial to this country, he should cheerfully vote with them; otherwise he should think it ought to be retained. He said it had been judicially determined that by the law of 1811, real estate, belonging to non-resident proprietors of a different sect or denomination, cannot be taxed for the support of public worship in the town where it is situated. This report proposes to extend to all Christians, the rights which were peculiar to persons of a different denomination from Congregationalists. It gives power to a Congregationalist, for any reason, to change his religious instructor, and prevents his being taxed in any place except where he attends public worship; the consequence will be, that all lands of non-resident proprietors will be exempted from taxation for the support of religious worship in any place. Was not this a great evil? He could name towns in which one third part of the land was owned by citizens of different towns, and was assessed for the support of public worship in the towns where it was situated. Deduct this portion of the taxes, and in many towns it would in a great degree derange their system of supporting public worship. It might be supposed that this evil

would be remedied on account of tenants being liable to be taxed. But there were a great many towns to which he referred, where the lands were not occupied by tenants, but used by the non-resident owners merely as pastures for cattle. Another inconvenience and injustice would arise from adopting the report that these lands would escape all taxation, as the assessors in the towns where the owners lived would not know of lands so situated, or would be ignorant of their value. For this reason alone, the report ought not to be accepted, and it was incumbent on those in favor of it, to show something equivalent to the derangement to the system of taxation. But although this inequality would be created by the report, yet this was but the dust of the balance, compared with the rest of the consequences. The report pays homage to religion generally, but does not mention the Christian religion in particular. That however was probably intended. In terms, it admits the importance of religion to the support of civil government. In terms, it requires the Legislature to provide for the maintenance of public worship, because otherwise, religion cannot be maintained, or civil government be supported. So far he agreed with the report, and so far the report agrees with the constitution; and no alteration is necessary. His objection was, that after asserting the great principles the committee go on to make provisions which directly contradict and contravene them. If the report shall be accepted, probably the Legislature would, in obedience to it, pass a law similar to that of 1800, requiring towns to support public worship if of sufficient ability. The report too provides that any persons not less than twenty may form a society, and be free from taxation for any other society. It does not require the aid of imagination to conjecture what will be the effect of these provisions, for we know by facts, that men join another society, so that the town becomes unable to support the religious teacher, and the society they join is unable. If the town is indicted for not supporting religious worship, they show their inability and are acquitted. What is the provision you make? You tell the towns that it is their duty to support public worship, and then you in effect say that no person need pay for that purpose unless he pleases; and the practical operation has been accordingly. But suppose the Legislature say that every town shall support public worship; leaving out the clause about sufficient ability, yet leaving every one at liberty to go where he pleases. What is the situation of a parish where they keep withdrawing, and the more there are who go, the more are induced to go? If the minister asks for his salary he is requiring the pound of flesh; if he does not, he leaves his parish and there is no minister. Mr. H. spoke of the detriment which would happen to that class of society who depend for their religious instruction on public worship. He spoke only as a citizen and not as a divine. He considered religious instruction, in a political point of view, to be as necessary as literary instruction. It might be said that religion would be supported voluntarily. He wished for better evidence of the fact than he had had; and if true now, it might not be

hereafter. Much had been said about inalienable rights; he asked if this meant that society could not do what was most for its good? If a man could not give up any rights for his greatest benefit? No interference with the rights of conscience was intended or felt from the first article. To say that the Legislature shall not regulate anything relating to religion, was to say that they shall not encourage any virtues or punish any vices or crimes. If we could trust to anything in history, it was to this, that our prosperity, and what most distinguishes Massachusetts, is owing to our provision for the support of religion and morality. He considered these a great support of civil society. He believed the only alternative was, to support it by religion and morality, or by a standing army. The proposition of the gentleman from Salem, was only to leave the constitution where it was before. It was not to repeal the law of 1811, which he considered as a bad law, but only to leave the Legislature the power, if necessary, instead of tying up their hands for all future time. He compared the provision for religious worship to that for town schools: those who have no children pay as great a tax as if they had; and if any person, having children, is not satisfied with the schoolmaster appointed by the town, he takes away his children, but never thinks of withholding his money from the support of the town schools; and yet the principle is the same; it is in fact a stronger case; for a man may withdraw to any religious society, and pay his money where he pleases, only he must pay somewhere. The amendment of the gentleman from Salem, Mr. H. said, would supersede all others. He should prefer the proposition of the gentleman from Pittsfield to the report of the committee. It would do no man honor to vote for the report. He accused no one of the committee of improper views. He knew it was not the case; but if they had lived in the vicinity to see the operation of the law of 1811, they would all agree in retaining the provision in the constitution. No evil could be pointed out from suffering it to remain, to be compared with those which would arise from abolishing it.

Mr. MURPHY was opposed to the adoption of the amendment of the gentleman from Salem, because it would tend to introduce great confusion and evil. It proposed to give power to societies to tax real estate. Persons of all denominations have made that provision for the support of public worship which they think necessary. They do not wish to incur the trouble and expense of assessing taxes, that they may draw them out for the support of religious worship which they have already provided for in other modes. The arguments which the gentleman who had last spoke had used were precisely those which he would have used, to show that the provisions of the constitution ought not to be retained. He could show in every part of the Commonwealth instances in which great injustice and oppression had been suffered by individuals; he could point to an individual on the floor who had had his property taken from him to the amount of 300 dollars for the support of public worship in a form which he did not approve. But who shall be entitled to the right of taxing

the whole property of the Commonwealth? In the town to which he belonged there were five distinct religious societies. Which of them should have the right to impose this tax? Some of the denominations of Christians were conscientiously opposed to the right of imposing any tax for the support of religion. The right therefore of taxing would operate unequally. The Episcopalians, the Baptists, the Friends, had never exercised the right. None he believed but the Congregational denomination had exercised the right. It was therefore granting to them an exclusive right. It had been contended that it was necessary for the support of religion. He did not agree that it was necessary. He contended that it was not. He found that all religious communities, besides supporting their own religious teachers, contributed large sums to the extension of the knowledge of Christianity to other countries. It was not necessary for securing the maintenance of the ministry, and it had a tendency to produce strife and contention. Persons were taxed in societies, who were accustomed to attend religious worship in other societies, and this produced jealousy, strife, ill feelings towards each other. The ministers in many instances do not wish it. They had rather labor with their own hands for their support, than that the stock and property of their flock should be taken and sold for their maintenance. He wished to strike from the constitution a provision that was not necessary for the support of religion, and which tended to produce strife and jealousy. It would reduce all the religious communities to a level, and would introduce a spirit of harmony and emulation for the support of religion, and he believed in a short time the amount of voluntary contribution for religious purposes, would be greater than can now be raised by the hand of power. If we would attend to the subject in its operation on religion, we should find it would have a good effect, to remove all restrictions, which operate to give exclusive privileges to a particular denomination. He wished to have the constitution so amended that there should be no inconsistency in it, and that each religious community should be entitled to equal privileges.

The committee rose—223 to 82—reported progress and had leave to sit again.

The House then voted to adjourn—203 to 129.

#### THURSDAY, DECEMBER 21.

The House met at 9 o'clock, and attended prayers offered by the Rev. Mr. Jenks. After which the journal of yesterday was read.

Mr. BEACH of Gloucester offered a resolution for altering the constitution so as to provide that all judicial officers, duly appointed, commissioned and sworn, shall hold their offices for the term of \_\_\_\_\_ years from the \_\_\_\_\_ day of \_\_\_\_\_ and upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well being of

the Commonwealth, provided that no person shall be appointed or continue in office after he shall have arrived to the age of years. Referred to the committee of the whole on the judiciary power, and ordered to be printed.

On motion of Mr. DANA the House resolved itself into a committee of the whole on the unfinished business of yesterday: Mr. VARNUM in the chair.

The question was upon the amendment offered by Mr. SALTONSTALL.

Mr. PARKER of Boston moved to pass over this amendment for the present, as it created embarrassment in the mode of treating the subject. Some other propositions which had been made were previous in their nature.

Mr. CHILDS of Pittsfield opposed the motion.

Mr. WILDE of Newburyport hoped that the motion to pass over the resolution would prevail. He was surprised that in the debate yesterday the general argument, whether the Legislature should have power to compel people to contribute to the support of religious instruction and public worship, was gone into in support of the motion of the gentleman from Salem to amend the report of the select committee. That report proposes not only to authorize the Legislature to make provision for the support of public teachers of piety, religion and morality, but enjoins it on them as a duty. The only ground on which the argument had been taken up, was, that the resolution offered by the select committee makes such a modification of the powers granted, as to destroy their effect. He did not think that the powers proposed to be granted to the Legislature would be destroyed by the provisions contained in the resolution, though this effect would undoubtedly be in some measure impaired. He thought that the committee ought to come first to the general question, whether any such power should be granted to the Legislature. For this purpose it would be necessary to take up first, either the proposition of the gentleman from Chester, or that of the gentleman from Pittsfield. They appeared to him to be propositions previous in their nature to those involved in the resolutions of the select committee, and the amendment proposed by the gentleman from Salem.

The motion was agreed to—159 to 110.

Mr. PHELPS of Chester said that when he drew up the resolution which he offered yesterday, he did not know that any other gentleman was preparing one for the same object. The resolution offered by the gentleman from Pittsfield contained the principles which he wished to have adopted, and as he did not wish to consume the time of the Convention, he would withdraw his resolution.

The CHAIRMAN said it could not be withdrawn. It was then voted to pass it over, and on motion of Mr. CHILDS, the resolution offered by him yesterday, was taken into consideration.

Mr. CHILDS said that the reason why he was the mover of this resolution was that the reverend gentleman from Boston, who was a member of the committee, and had proposed making a motion of



similar import, was not in his seat at the time when the subject came up in Convention. He hoped the object he had in view would not be prejudiced by the proposition coming from him, instead of coming from a more respectable and proper source as had been intended. Mr. C. stated as a general principle, that the right of every individual to worship God in a manner agreeable to the dictates of his own conscience, was one which no government could interfere with. Whenever government had undertaken to exercise an authority in this respect, it was an usurpation, and when this usurpation had been submitted to, the worship rendered was not sincere. In our own government, unless it could be demonstrated that it was necessary to the support of government, and clearly for the interest of the community, it could not be fairly exercised. He would call the attention of the committee to the argument of the gentleman from Boston. He would not admit that he or any other gentleman who would support the report of the select committee felt a greater interest in the support of religious institutions than gentlemen who would advocate the resolution which he had proposed. The gentleman had said that the committee were unanimously of opinion that the support of institutions for religious instruction and worship were essential to the happiness of the people and the good order of society, and therefore ought to be supported by legislative provision. He, Mr. C., would draw a different conclusion from the same premises. He argued that because religious instruction and worship were essential to the happiness of the people and good order and preservation of government, they ought to be left to the free support of every individual, according to the dictates of conscience. He contended that this was the only mode in which religious worship could be properly supported, and the mode in which in practice under the constitution it had been actually supported. The principles of the third article in the declaration of rights had been abandoned in practice, and the resolution before the committee did not deviate from what had been the practice for many years in the Commonwealth—what had been recognized by the Legislature—and from the general sentiment of the people. He believed there was no state where there was so much refinement—so much instruction, and so great a regard for religion as were to be found in this Commonwealth. He was willing to go as far as any gentleman in this eulogy of the character of the people in all parts of the State. But he would not admit that this character was to be attributed to the inefficient and inoperative recognition of a principle in the constitution. It was to be attributed to the general support of common schools—they were the *primum mobile* of improvement in the Commonwealth. He appealed to the example of the town of Boston where this principle of the constitution had no effect, and yet there was nowhere to be found a higher degree of improvement. The example of Rhode Island had been appealed to as a case to show the necessity of some constitutional provision for the support of religion. But Mr. C. said that the low state of morals and im-

provement in that state could not be attributed to the want of a compulsory provision for the support of religion, but to their want of common schools. In Providence, where schools were encouraged, as much attention was paid to the support of religion as in Boston. This amounted to a demonstration that the effect was to be attributed to the general diffusion of education by common schools, and not to any provision for the support of religion. The example of New York, he said, had been appealed to, but there was there the same want of schools as in Rhode Island. It was proposed to substitute the word Christian for protestant. He called on gentlemen to define Christian. Clergymen differed on the subject. What would be called christianity by one, would be called infidelity by another. Who knows what will be the state of things some years hence. The time was rapidly approaching when men professing to be Christians will be so opposed that if this part of the constitution is retained, the Commonwealth will be in a state of greater dissension from theological differences than they have ever been from political controversies. The resolution proposed by the select committee, declares the principle thus—the Legislature shall have power to compel the people to support religious teachers; but if gentlemen would examine it in its details, they would find that it would accord in practice with the principle in the resolution proposed by him as a substitute. In this construction his opinion was supported by the argument of the gentleman from Concord yesterday. That gentleman was consistent in his views, and for adopting a consistent course. Mr. C. said he would rather adopt the consistent principle of that gentleman, than the contradictory one of the committee. The proposition supported by him was explicit, and it would be known what was to be depended on. The principle maintained by the committee with the qualifications with which we had accompanied it, would keep the State in constant quarrels and collisions. He repeated that rather than take the report of the committee, he would take the proposition advocated by the gentleman from Concord. Our forefathers had been repeatedly brought forward as affording an illustrious example. He presumed, however, that their example was not to be adopted in everything, and contended that this was a domination of the same kind, and only differing in degree from that which every body at the present day disapproved. He would state how far, in his opinion, government has a right to interfere in matters of religion. So far as the laws can take cognizance of offences committed against good morals, government has a right to interfere; but the principle which leads us to worship God, is beyond the control of government. The gentleman from Concord had said, that if we abandon the means of supporting religious instruction, we should be obliged to resort to a standing army to enforce obedience to the laws. He, Mr. C., would reverse the proposition. Establish the principle that government has a right to compel the support of public worship, and a standing army will be necessary to carry it into effect. The gentleman was mistaken. The proper support of

religion was the voluntary contribution of individuals. Mr. C. also said that the third article was inconsistent with the second article of the bill of rights.

Mr. TUCKERMAN said that he had not intended to have spoken to this subject. He thought however that there was a fallacy in the argument of the gentleman from Pittsfield, which it would not be difficult to expose, and which ought to be corrected. He agreed with that gentleman, that religion had too often been abused, to accomplish the purposes of civil government; but said that it was very unjust, on the ground of this abuse, to reason against the use, which legislators might make of religion. Government, if it be free, must be founded in religion; or in other words, in the virtues that are derived from religion. That if there was a vantage ground of which, of all others, as a politician he would avail himself on this subject, it would be this, that for our very knowledge of the principles of pure republicanism, we are indebted peculiarly to christianity. It was not necessary to run a parallel between our own and other governments, in order to show the distinct and individual character of our own civil institutions. Let gentlemen consider but for a moment, how analogous are the principles which distinguish our civil institutions, to the spirit and principles of the Christian religion. Other religions had taught the *rights* of the rich and powerful, and the *duties* of those who were without power, and were poor. But it was christianity that first taught explicitly, and fully, and with authority, the rights of the poor, the dependent, and the governed, and the duties of the rich, of rulers, and of all who had influence in society. Our religion is a perfect system of reciprocal rights and duties, extending to every relation and circumstance of life. He asked, why was christianity persecuted, when it was first given to the world? It was for the very reason, that it was opposed, in its great and characteristic peculiarities, not only to the general sentiments and usages of the age, but to all that characterized the governments of that time. If our religion, in its purity, had pervaded the mass of the people to whom it was first offered; if it had been generally received where the Roman government had extended its authority, it would have produced a state of society to which we have no parallel in any age or nation of the world. A society possessed of all the essential principles of civil liberty, most worthy of all the proper freedom of man, and capable at will of asserting its rights, and yet submitting without resistance to a most oppressive tyranny. Had it been received by the governments of that age it would have brought them at least to a very striking resemblance of our own. This consequence would have been necessary. The Romans incorporated with their own, the gods of conquered nations. It was a part of their policy. But they knew too well the policy of a despotism to receive under its patronage a religion which taught the rights of every individual as explicitly as his duties. These were among the reasons why christianity at its first introduction to our world was rejected and perse-

cuted. But pass on to the age of Constantine. It is said that here we are to look for the reciprocal influence of christianity on government, and of government on christianity. But is this true? What was christianity in the age of Constantine? Every one knows that the christianity embraced by Constantine, was a most perverted and corrupted form of our religion. He made it the religion of the state, because, as he received it, he could make it subservient to the purposes of a despotism. Christianity, as it was then received, and christianity as it was in the days of its author, were distinct religions. No fair argument therefore can be deduced from the use that was thus made of christianity, falsely so called, against availing ourselves of its power in circumstances, in which, if it act at all, it can act only in favor of the people. The gentleman says, this article is inoperative, and he says too, that in its principles it is a usurpation of inalienable rights. He must reconcile these views of it. But he asks, why have not the Legislature availed itself of the compulsory power which is given in the third article? The reason is, that the indirect influence of this article has secured them from the necessity of using this power. But annul this article, and it will not require the eye of a prophet to discern the time, when our State will obtain a new character; when some of its most important institutions will be unsettled; and when we shall not be able to remedy the evil we have occasioned. The gentleman says that our schools are nurseries of morality. They are. But would our institutions for the instruction of youth be what they are, if they were independent of our institutions for religious instruction? We are referred to Rhode Island and New York, where no provision for the support of religion is made, like the third article of our bill of rights. And we may ask if, in those states, there are institutions like ours for the universal diffusion of knowledge among children? The author of the Age of Reason was asked why schools were established in one state in every town and settlement, and the education of youth in other states was so much neglected? He answered, that where you find the institutions of religion maintained, there also you will find schools; and where there are no churches, there also the instruction of the young is neglected. And is it not so? The gentleman says, if religion is to be established, let it be defined. He challenges any gentleman to say, amidst all the confusion of sects, what is christianity? We reply, it is a great and characteristic excellence of this article, that it does not define religion. It does not take cognizance of opinion, nor leave opinion to the cognizance of a legislature. It gives no exclusive claims to any denomination of Christians. It provides only that Christian instruction shall be maintained. The prevailing evil of other establishments has been, that they have defined religion and enforced the sentiments of a sect or party. The framers of our constitution have avoided this evil. And in answer to the question what is christianity, Mr. T. said, that it consists essentially in the great and essential principles in which its believers agree;

in a conviction of the divine authority of its author, and of the obligation of the duties of his religion. Fenelon was a true Christian; and so was Wm. Penn; and so was Watts; and at least equally so was Lardner. This definition of christianity may not be satisfactory to all. It comprises however the christianity recognized in this article; and for which the advocates of the article contend. Religion, comprehending the personal and social virtues of the gospel, and as recognized by the constitution, is an angular stone in the fabric of our government. Remove it, and you will make every part of the edifice insecure. He said that the article had received a construction which had occasioned some evil. He should be glad to adopt any modification of it, by which this evil might be prevented. He thought that a Trinitarian ought not to be obliged to pay his tax for the support of Unitarian worship; nor that a Unitarian should be compelled to support Trinitarian worship. But he thought that, as no state ever did or can flourish without religion, any more than without a judiciary, it was quite as reasonable that every individual should be obliged to support religion in some form, as that he should contribute to the support of the established courts of law.

Mr. ABBOTT of Westford opposed the resolution of the gentleman from Pittsfield. He said, in answer to the gentleman from Lynn, (Mr. MUDGE) that it should be shown that the cases of particular inconvenience outweighed the general good arising from the third article, before it should be annulled. He should have thought it a self-evident proposition, if a contrary opinion had not been intimated in the course of the debate, that religion and morality were essential to the good order and happiness of a people; he would, however, refer gentlemen to the history of other countries where they were not supported, for the truth of the assertion. He apprehended that if we should not uphold them, we should soon witness a disregard for the Sabbath, and that the people would cease to exhibit the same orderly conduct which now prevails. He argued that in giving the Legislature power to interfere in the support of religion we were not divesting ourselves of inalienable rights. The bill of rights declares, that the rights of defending our lives and liberties and of possessing and protecting property, are inalienable; and yet no man ever thought that the laws regulating the modes of defending our lives and of acquiring and retaining property were repugnant to this declaration. The right of taxing for the support of public worship did not interfere with any of these inalienable rights, and the people had as good a right to invest the Legislature with this power in respect to public worship as in respect to public schools. There were some rights, such as that of private opinion, when it does not result in acts hostile to the well being of the community, where the Legislature ought not to interfere, and this third article invested it with no power in such cases. The question then was, is it expedient to give the Legislature the authority contained in this article. It had been said there was no

provision of this kind in the constitution of any other state in the union. Comparisons were invidious, but he did not think that Massachusetts was behind her sister states in good order and virtue, and it was not certain that the good habits of other states will continue so long as if they had such a provision as we have. If we strike it out of our constitution we may have reason in future to regret it. The gentleman from Pittsfield says there is an inconsistency between the second and the third article of the bill of rights. It was surprising that we at this late day should be the first to make the discovery. The second article says that no man shall be amenable for his private sentiments in religion or for worshipping God according to the dictates of his conscience in a peaceable manner, and the third says that every man shall contribute to the support of public worship in order that the State may derive benefit from it. He professed himself unable to see the contradiction. If the Legislature had not the power of compelling a man to contribute, the provision would be nugatory. He concluded by hoping that the provision in the third article would remain.

Mr. NELSON of Malden said that it was generally agreed that religion was a valuable thing, and that it was useful to support public worship; but the question was, what mode was most expedient for that purpose. He thought that for the Legislature to put any restraint on religion was going beyond their liberties. That religion was not a matter for legislation. The Lord Jesus Christ declared that his kingdom was not of this world. This kingdom had been in the world ever since his time and did not need the aid of civil authority. Jesus Christ was the king of this kingdom, and he asked whether the Legislature of this Commonwealth had a right to make laws for this kingdom. It had been objected that the Christian religion would go down, if not supported by the civil arm. It had stood on its own broad basis for two thousand years, and it had been as prosperous the last twenty years as ever it had been. It was the safest and most honorable way to leave it to voluntary support. He referred to great exertions which had been made and are now making for its support and extension by the British Foreign Bible Society and other institutions of the kind, which would despise calling in aid from the civil arm. He said the argument from the effect to the cause was not just in this case, as applied by gentlemen in favor of the provision, for the operation had not been beneficial as they had asserted. He should hold up his hand with peculiar energy to alter this article, not expunge it, for then he feared the Legislature would go to making laws about religion. He would insert a provision to restrain them from making any laws on the subject, and one other provision to prevent any subordination of one denomination to another.

Mr. STOWELL of Peru thought the advocates for the abolition of the third article, mistook their interest. For the last twenty years, the Legislature had been constantly petitioned to incorporate reli-

gious societies; and why? because societies could not enjoy their rights without being incorporated. These petitions are granted of course. They have their rights secured—religion flourishes. Take away the right of the Legislature to support religion, and they are left without any provisions for their security. He was opposed as well to the report of the select committee, as to the resolution of the gentleman from Pittsfield.

Mr. BLAKE of Boston said he had already been indulged with an opportunity of expressing the views of the select committee, and it might be expected that he should also express his own views on this subject. When the Convention first assembled, the sentiment of respect and veneration for the constitution was reiterated from all parts of the house; this sentiment had been sadly departed from. The constitution had become too familiar by too much handling, and gentlemen now talked very freely of its rotten parts and of its relics of bigotry. He objected to making many alterations, where five hundred minds were to be consulted. Fifteen men out of the Convention might meet together perhaps and agree upon some things which might be useful. He held the third article to be the most material part of the constitution; it was the key stone of the arch. He would endeavor to answer some of the objections advanced against it. One objection was that religion will take care of itself. It will do so; but by secondary causes. Is it a blessing? One of the choicest blessings we enjoy? Like other benefits conferred by Providence on man, it would require an effort on his part. It is true that originally christianity did support itself. Its author was living and had the power of working miracles to establish it. God has made provision for the inferior parts of the creation, but from man he requires exertion. He has given man mind; but without study and cultivation it is a mere *carta erasa*. It is said that religion is an affair between man and his maker, and legislative interference is improper. The argument would prevent our enacting laws against blasphemy, breach of the Sabbath, murder, theft, and other things forbidden in the ten commandments. It has been objected that individual evil has been produced by the operation of this article. This is incident to all general laws, but it is no answer to the general good which results from them. It has been said that this is the only State which has a provision in its constitution of this kind. This was true, but not an objection to it. He had travelled a great distance along some parts of our Atlantic coast, and except in our cities had frequently found nothing to remind him that he was in a Christian country. Massachusetts in this respect stood on an eminence. Another argument was alleged that it was unjust to tax one person for another's benefit. The same objection would apply to taxes for the support of schools, courts of justice, in short, of all public institutions. The gentleman from Lynn considered this article as interfering with the rights of conscience. The question was not a question of conscience, but of pounds, shillings and pence. There was no injunction in this

article to attend at any particular place of public worship; every man might attend where he pleased.

Mr. BALDWIN of Boston rose for the purpose of supporting the resolution offered by the gentleman from Pittsfield. He objected to the statement made in a syllogistic form in the third article of the declaration of rights. He agreed in the premises, but denied the conclusion. It was stated, that as the happiness of a people and the preservation of government depend on piety, religion, and morality, and as these cannot be diffused without the institution of public worship, therefore the people have a right to invest their Legislature with power to compel the support of public worship. This conclusion, he insisted, did not follow, but the object could be obtained in a more skilful and proper manner than by legislative interference. He appealed to the Mosaic dispensation to prove that no penalties were inflicted by the civil magistrate, to enforce the performance of religious duties. He quoted a number of passages from Scripture, which he maintained, supported his position. He quoted also from the New Testament, to show that religion was not to be propagated and supported by the aid of the civil magistrate. In our Lord's instructions to his disciples, he said, If they do not receive you—what then? Deliver them over to the civil magistrate? No, but shake off the dust of your feet against them. The kingdom of our Saviour was not of this world. Religion was not supported in the apostolic age, by force of any kind. It might be answered, that it was supported by miracle. He did not understand it so—all the powers of the pagans were opposed to christianity. St. Paul preached the gospel "from Jerusalem round about unto Illyricum," a distance of a thousand miles, and travelled probably in a zigzag line. It did not appear that his preaching was supported in all cases by miracles, but by the power of truth. He did not agree with the gentleman from Chelsea, that the cause of christianity was promoted by its connection with the government, under the emperor Constantine.

Mr. TUCKERMAN rose to explain. He did not say that christianity was promoted by the countenance it received from Constantine, but that he received it, when it was in a form so corrupt that he could convert it to his own purposes. In the pure state in which we enjoy it, it does not admit of being perverted to any such purposes.

Mr. BALDWIN proceeded. He said that Constantine had done christianity greater injury than good by adopting it as the religion of the state. It did not need the aid of government to assist its propagation. Its connection with the government tended to corrupt it; and he attributed the low state of christianity, during the dark ages, to its amalgamation with the civil power. He described the atrocities committed in France, under the sanction of christianity—the massacre of 60,000 protestants in 1562—the two civil wars that followed; the massacre at Paris, when 70,000 persons were slaughtered, and human blood flowed down the channels of the streets; and attributed these cruelties to the unnatural combination



of religion with the civil power. He referred to the persecutions in England—the burning at Smithfield—the imprisonment of John Bunyan—the ejection of two hundred dissenting ministers—the persecution of Thomas Delong, and other examples, to show the abuses of religion when connected with the civil power. He honored the memory of our ancestors. But, said he, shall we perch ourselves upon their tombstones and sing a requiem to their ashes, or shall we endeavor to derive profit from their experience and example, and continue the course of improvement which they began. We should imitate their virtues and take warning from their vices. If those exalted spirits could look down from heaven, they would, if it were possible, shed tears of regret for the errors they committed in persecuting those who differed from them in matters of religion. He said that no denomination had been more devoted supporters of the government of this Commonwealth, nor more persevering friends of liberty, than that to which he belonged. He adverted to the history of the present constitution. He had no doubt of the pious intentions of the framers of it, in inserting the third article. It was a subject of great difficulty—there were long contentions—and it was hoped that it would answer the purpose of reconciling all parties. But it had been found that some improvement could be made in it. The intentions of the framers had not always been carried into effect—treasurers have sometimes refused to give up money to which other denominations were entitled. He had known in one town in the county of Middlesex, fourteen lawsuits to compel them to pay over the money. The necessity of such proceedings occasioned much expense, and, what was worse, created ill-blood. He contended that the proposition now under consideration, would give sufficient security to all denominations. There was one argument which had not been touched upon. The dissenting denominations had never resorted to the aid of the law for the support of religion. They depended solely upon the power of truth. Yet they had always been increasing, in opposition to the Congregational denomination. The argument therefore, that if the laws for the support of public worship are repealed, the members of the Congregational societies will all fall off, was not sound. But it is these laws that drive them off. Oppress any people and you may be sure that they will effectually resist it, and will find their level in society. He did not wish there should be any oppression, any subordination of one denomination to another. He would, for his part, never consent to receive anything towards his support, that was extorted by the aid of laws. He coveted no man's gold or silver. Such support was not necessary. He referred to the clergy of Boston; they were liberally supported, and entirely by voluntary contribution. He recommended the trial of the same system in the country, and he hoped that the resolution would be adopted.

Mr. FREEMAN of Boston rose because it was desirable to have persons of all denominations express their opinions. He belonged to a minority, as well as his colleague, (Mr. BALDWIN;) but he

could say for himself and his friends of his religious sentiments, that they had never found any inconvenience from the operation of the third article. From the year 1730, they had always enjoyed and expressed their sentiments freely. He had heard of some abuses under this article, but he thought they were such as might be remedied by legislation. If the mode of drawing taxes from the treasurers was inconvenient, it might be changed. One argument which had been urged against the article was, that religion is a work of God, and that it is presumption in man to intermeddle. The gentleman from Boston (Mr. BLAKE,) had given a sufficient answer to this, in saying that God operates by second causes. The Christian religion was introduced by miracles, and then it was left, like other things, to extend itself by ordinary means. Does not God give us everything? Our daily bread? But if we do not work we have no bread to eat. How is the word of God spread? Is the Bible dropped from heaven? ready translated for the different nations who are to use it? No, Bible societies and other institutions are formed in various parts of the Christian world. Is human interference proper here, and does it become vicious as soon as it assumes a legislative form? Another objection is, that religious establishments have been productive of mischief. He agreed that making this provision was establishing religion, and that religious establishments had been mischievous, but it was because something else was mixed with religion. This article does not establish Calvinism, or Arminianism, or any particular creed. It establishes nothing but christianity. The word protestant was used, no doubt, with the best intention, because at the time the constitution was framed, there were none but protestants among us. Since that time, a respectable body of Christians has grown up, and it is proper to change that word. That religion is established by this article, which makes the Scriptures the rule of our faith, with the right of interpreting them according to our own understanding. In other countries, this has not been the established religion. Constantine established the religion of the council of Nice. Constantius, that of Arius. The catholic is that of the council of Trent. The religion of England is that of the thirty-nine articles—of Scotland, that of the profession of faith. An attempt was made here to establish that of the Assembly's Shorter Catechism. Some would prefer to have Swedenborgianism, or Hopkinsianism, or some other religion established here. But, thank God, our government is wiser than they. It leaves us a common religion in which we all agree, and we are at liberty to mingle in it truth, folly, or error of our own, as our conscience and understanding shall dictate. It is said that other states have no such proviso. He was tired of appeals to other states. He knew not what right they had to dictate to us; we ought rather to give an example to them, with one exception, Virginia. In Virginia there were wise men. Wherever they appear, they appear as one body, and act with a ponderous mass. He would not yield, however, to that state in regard to religion. If several states are trying to prove that government does not need

the aid of religion, nor religion the aid of government, let them ; and let us take the other course. If, at the end of forty years more, it shall be found that they make wiser ministers and better men, and establish more good order in society, it will then be time for us to change.

The committee rose, reported progress, and had leave to sit again.

It was ordered, that when the House adjourns, it shall adjourn to half-past 3, P. M.

Leave of absence was given to Messrs. FOX of Berkley, KNEELAND of Andover, PELHAM of Chelmsford, SMITH of Sunderland, and CUMMINGS of Orleans.

The House then adjourned.

#### AFTERNOON SESSION.

The House met according to adjournment.

Upon calling the Convention to order, the president mentioned that it would be impossible for him, on account of ill health, to resume the chair this evening, after the committee of the whole should rise ; whereupon it was ordered that the president be authorized to nominate a gentleman to preside in case of his absence—and he accordingly nominated Gen. VARNUM of Dracut, as president pro tempore.

The Convention then went into committee of the whole on the unfinished business of this forenoon : Mr. VARNUM in the chair.

Mr. DUTTON said, after some introductory remarks, that the effect of the amendment now under consideration, was to take from corporations the power of raising money by taxes, for the support of religious instruction. He was opposed to the amendment, and in favor of the provision of the constitution. In considering the question, he was willing to pursue the course indicated by gentlemen on the other side. The right to establish a religion by law, had been denied. In examining this, we were led to the origin of government. All the constitutions of this country were declared to be compacts ; and in these, certain rights were reserved, called natural or inalienable. These were so many limitations upon the power of the majority—they were never to be encroached upon,—they were never surrendered. It was for the common benefit of all that these rights should be held sacred, of the majority who formed and administered the government, as well as of the minority. Within these limits, what had the government, when formed, a right to do ? Generally, it had a right to do whatever would promote the public welfare, the highest interest of the community. The question then, might arise, whether it would not be expedient, or for the public good, to make provision for a system of moral instruction, by compelling men to contribute to the support of teachers of piety, religion and morality ? The State had, doubtless, the right to do this, if religion could be established without invading any of those rights which were allowed by all to be natural. As to the expediency, or

even necessity of placing religion under the patronage of government in some form, history was full of instruction. Mr. D. here referred to the practice of ancient nations, especially of the Greeks and Romans, for the purpose of showing that they found it necessary to call in the religion of the country as an auxiliary of its civil polity. And concluded. by saying, that no nation had yet been found without some notion of a future state of reward and punishment, and that all lawgivers have availed themselves of this belief to give, in some form or other, sanction and authority to their civil institutions. If such has been the experience of the world, the expediency of giving the support of law to a system of Christian instruction, is as much greater as the Christian religion is better than any other. Its pure and sublime morality, its motives and sanctions, recommend it as infinitely better suited to the purposes of civil government, than any or all other systems; and it is not only the right of the State to provide for its support, but its solemn duty. There is no morality without enormous defects, but Christian morality, and this is necessarily connected with the Christian religion. To establish this, if it can be done without invading the sacred rights of conscience, is the duty of the State. Has this been effected by the present provision of the constitution? By the second article of the bill of rights, it is declared that no subject shall be hurt, molested, or restrained in his person, liberty or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious professions or sentiments, provided, &c.; and in the third article it is declared, that every denomination of Christians, demeaning themselves peaceably and as good subjects of the Commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another, shall ever be established by law. This he contended was perfect liberty of conscience; this was preserving inviolate the right of private judgment in matters of religion. With these limitations, then it became the duty of the State to establish the Christian religion, because it aided the highest and best purposes of the State—its tendency was to make better subjects and better magistrates, better husbands, parents and children. It enforced the duties of imperfect obligations which human laws could not reach—it inculcated all the domestic and social virtues, frugality and industry, prudence, kind and charitable feeling—it made men just and honest in their dealings as individuals, and by diffusing the sentiments of equity and benevolence, its tendency was to make states and communities just towards each other. It applied itself to the source of all action, the thoughts and interests of the heart. It entered the secret chambers of the soul and there performed its work silently and invisibly, but most effectually. It suppressed the rising sin, it extinguished the embryo transgression. It subdued and controlled the bad passions of men, by its powerful influence upon their hopes and their fears. Are not these civil benefits; are not these effects good for the State?

But it is said that religion is a concern between man and his maker ; and so it is. Every man is responsible to God for his faith, and to God only. The state does not intermeddle with it. That is merely a personal concern, and every man must stand or fall by his own faith. But the state does take notice of the conduct of men. It punishes offences against christianity, such as blasphemy, bigamy, &c., not for the purpose of upholding it as a religion, but because they are offences against the state, against the good manners and morals of society. Such a religious establishment as the constitution provides, rests, then, on the same foundation as schools, courts of justice, or any other institution for the public good. They all stand on the same ground of *public utility*, and the same objections can as well be argued against one as the other ; and the right or duty of the state to take the money of its members for such purposes, has no concern or connection with the consciences of men. The benefits of these institutions are common to all ; and all find their indemnity for the money they contribute, in the advantages they derive from them.

But it is said that religion is so important that men will voluntarily support it. This is the argument most relied upon, and merits examination. In the first place, it proceeds wholly on a mistake ; for it supposes that men will always do what is for their permanent welfare to do. This is not true. Reason is against it ; all experience is against it. It is for the welfare of all men to be industrious and honest, and yet the world abounded with indolence and fraud. He appealed to the knowledge of gentlemen who heard him, to say, if the Christian religion was as well supported in those parts of our country, where there was no legal provision for it, as it was in this State ; if the Sabbath was as well observed ; if public worship was as well attended ; if there were as many ministers supported in proportion to the wealth and population ; if there was as high a tone of morals and manners. He admitted that there was such a stock of religious habit and feeling in the State, that it would require time to diminish or exhaust it ; but he did believe, that if the provision in the constitution was abolished, we should perceive its decline in our day, and our posterity would witness a still more lamentable declension. Take the case of a small parish, of which there were hundreds in the Commonwealth, just able to support a Christian teacher. One man living at a distance drops off ; another and another follows, till the burthen becomes too oppressive for the few who remain. The pastor is compelled to leave his flock ; and all the countless blessings of public worship, Christian instruction and Christian ordinances are lost forever. He could not contemplate such a moral picture without emotion. On this subject reason and experience agreed. It was dangerous to place the duty and the pecuniary interest of men in competition with each other. There was enough of disinclination to moral duty, without adding the sordid aid of money. Place the duty of men in one scale, their disinclination and money in the other, and which

will preponderate? The tendency of such a competition was to weaken or sever the last ties that bind men to their highest duties. The effect of a voluntary support might also be considered in relation to the teachers themselves. And here he would ask if it did not create a feeling of dependence, unfavorable to the discharge of the sacred office of a Christian minister, whose duty it was to declare the whole counsel of God, whether men would hear, or whether they would forbear. It would also operate as a discouragement to young men of education and virtue from entering into a profession where the means of support were so uncertain and precarious. The profession was truly a learned one, and much labor and expense were necessary to qualify a man for its proper and useful exercise. He would add inducements instead of discouragements. He considered the two provisions in the constitution—the one providing for the establishment of schools, and the other for a system of moral instruction at the public expense, as laying the only sure foundation of free government. They were connected, supporting and supported by each other. Knowledge by itself was power; and it was a power to do evil as well as good; but connected with virtue, it became the instrument of good to the State, and good only. He admired the wisdom, the foresight, and the virtue of the men who thus laid the foundations of the State broad and deep. It must rest upon these or it must fall, for nothing else can sustain it. He knew nothing that had more of moral grandeur in it than the example of a poor man's son, availing himself of the means provided by the State, of instruction in useful knowledge and virtue, rising to the highest offices, and becoming a blessing and an ornament to his country. This is the best commentary upon the excellence of our constitution. It is thus that the inequalities of condition are compensated for; it is thus that men are made equal, and kept so. It is these great results in political science, which we begun with, that are now shaking and heaving the ancient governments of Europe. Mr. D. then proceeded to answer some of the various arguments and objections that had been urged on the other side, and concluded by saying, that he revered the right of private judgment in matters of religion as much as any other man. He considered it as one of those important results in human affairs, which required time and labor and suffering to accomplish. He venerated the names of Luther, Melancthon, Cranmer, and Chillingworth. It was by such men, and by the heroic sufferings of their followers, that this great good had come down to us. He would preserve it. The constitution did preserve it; for no case of persecution for conscience' sake ever did or ever can arise under it.

Mr. SLOCUM of Dartmouth said that he should approach the temple with a fearful hand. Nothing could occupy the attention of the committee of a more important nature. He hoped they should amend the constitution, so that they might leave it as a legacy to their children, that they might have something to walk upon. When he heard the discourse of the learned gentleman from Boston,

he thought there was a proposition to turn the pastors out to feed on grass, like Nebuchadnezzar; but upon reflection, he found it was a question about encouraging religion and morality. He was in favor of the resolution of the gentleman from Pittsfield. If it should not be adopted, they should not have that free exercise of religion, there had been so much blood spilt for. They had abolished a part of the article, authorizing the Legislature to compel attendance. Suppose they should have churches, and ministers to preach, and nobody to go and hear. In what situation should they be in then? Were they afraid that religion would not stand on its own bottom. If it would not, it should be propagated like Mahometanism, with the sword in one hand, and the Bible in the other. If it was supported by law, it would be a law religion. If the report of the committee was adopted it would not make Christians—it would make a hundred hypocrites to one Christian—religion would not flourish. He was of opinion that if this resolution was engrafted into the constitution, the people would rise up and say, Well done thou good and faithful servant.

Mr. FLINT of Reading admitted that religion was an affair between God and man, but it was an affair that also had something to do between man and man. Our fathers came to this country because they were oppressed; they came with the Bible in their pockets, and religion in their hearts. They established laws for the protection and promotion of religion. The framers of the constitution also declared that it was necessary to provide for the support of public worship, and that it was the duty of the Legislature to make such provision. He believed they were sincere in their belief that legal provision was necessary, and that they decided correctly. But it was now proposed to reject this clause in the constitution. He argued that it was necessary to make legal provision for the support of religious instructions, that there might be sufficient inducement for young men to qualify themselves for the office of public instructors. It was a profession which required thorough preparation and long study to make a man useful in it. If religion was encouraged by the government and the people, it would have the blessing of God and would flourish. He hoped this part of the constitution would be preserved, that it might be handed down to posterity, as a proof of the regard of our ancestors and of the present generation for religion.

Mr. WILDE of Newburyport held it to be his duty to give his testimony against this resolution. He should have been much surprised at the motion of the gentleman from Pittsfield, if he had not been apprised that similar sentiments had been entertained by some persons in some parts of the country. He was still surprised at the form in which the proposition was introduced. The preamble was copied in substance from the third article of the declaration of rights. It declares that as the happiness of a people, and the preservation of government depend upon religion and morality; and as these cannot be generally diffused but by the institution of public worship,

no person shall by law be compelled to join or support any congregation or religious society whatever. If this was a fair conclusion from the premises, he did not understand the gentleman's logic. As the article stands, the syllogism is perfect and the conclusion irresistible—not that no person shall be compelled to support, but that the people have a right to give the Legislature power to require the support of religious institutions. If religion and morality are essential to the happiness of a people, and if these cannot be diffused but by the institution of public worship and public instructions in religion and morality, it follows that it is the duty of government to provide for the support of this worship and these instructions. But it does not follow that because they are necessary they ought not to be supported by the civil government.

The gentleman who introduced this resolution had no objection to the support of schools of morality; but did not schools of morality and the institutions of religion depend on the same principle? The provision of the constitution is, that the Legislature shall from time to time authorize and require the towns, parishes, and religious societies, to make suitable provision for the support and maintenance of public teachers of piety, religion, and morality. If the power is taken from the Legislature to interfere in matters of religion, they will have no right to interfere in matters of morality. If the gentleman's proposition is adopted, his concession in favor of morality will amount to nothing. The two are inseparably united. Morality cannot exist without religion. There may be a kind of morality with a false religion; it will be more or less pure according to the approach of religion to the truth; but without religion it has no sanction or power; it can have no influence. Without the sanctions of religion, men will follow their own desires, their pleasures, the dictates of their passions. Morality has no sanctions, and can be no check. Take away religion, and you take away all restraints on the passions, on vice, on immorality. Not all the standing armies on earth could support a government without the restraints of religion; armies themselves could not exist without it. Nothing was so contrary to the experience of mankind as that morality could be supported without religion. It is among the objects of civil government to guard the property, person, and liberty of individuals. How were these to be guarded? Not merely by the vigilance of the civil magistrate; not by inflicting punishment; no doubt these have a very salutary effect on the community; but much more was to be attributed to the institutions of religion; to instructions which address themselves to all classes of people; which make an impression on the minds of the young,—infinitely more than to all the vigilance of the magistrate. Without these institutions vigilance would be vain. Few crimes are committed without the expectation of escaping detection. It is therefore the influence of religious and moral impressions alone that restrains a great portion of mankind from the commission of crime. Do parents wish their children to be exposed to temptation without being



guarded by the influence of these institutions? Every one would say no. He was aware that the gentleman who had advocated the resolution, had conceded the influence of these institutions. But he had dwelt upon this part of the proposition because he considered the other part equally clear. He would beg gentlemen to pause upon one or two considerations. It was said that religion would be supported without the aid of government. Granting this, it did not follow that it would be injured by having the aid of government. The government has great means, power, and influence; if the measure is good, how can we say that it shall not exercise these? It had been said that religion was not to be propagated by human means. This he denied. He could demonstrate that there was no truth in it. If it had been the intention of Providence to propagate religion without human means, it might have been so ordained. But the question is, how has religion been propagated? It has been by human agency. Gentlemen have conceded it. The gentleman from Boston spoke of the influence of the Bible Society; that was one of the human means. Everything that we know contradicts the position that human means can be dispensed with. If it is true, the instruction of children by their parents is a work of supererogation. The reverend gentleman himself is engaged in a work that is not necessary. But it is insisted that civil government cannot interfere, without invading the rights of conscience. We have heard of persecutions and massacres; but what have these to do with the third article? The framers of the constitution have guarded all points. They were sensible that the people have no right to restrain a man in the exercise of the rights of conscience. They have gone farther than the proposition of the gentleman from Pittsfield, to show how the Legislature may provide for the support of religious worship, without invading the rights of conscience. Gentlemen appear to overlook this. It is because other nations have interfered with the rights of conscience, and because they have on that account acquired a prejudice against religious establishments, that they apprehend mischief from this provision. Every nation has a right to establish religion as one of the supports of government. They have the right to establish a particular religion, if they see fit, reserving to individuals the right of worshipping God according to the dictates of their own conscience. He did not say it was expedient—far from it, but that they have a right. The fault of those who have exercised this right is, that they have undertaken to say that every individual shall worship in a particular mode. This is what they have no right to interfere in. If the third article is not already sufficiently guarded, let it be so. It may require modifications, and he was willing to make them. He agreed with the gentleman from Lynn in most that he had said. That gentleman admitted the importance of religious instruction; but he contended that it did not need the aid of government. No doubt without this aid there would be a great deal of religion. In Boston and in other large towns it would be liberally supported,

because they have the power and the disposition. How did they get the principle that will induce them to furnish this support? Was it not from the influence of the protection which has heretofore been given to it? Where did the principle which gave rise to the British Bible Society spring from? Was it not from the religious establishment, which was so much censured? No doubt there would always be religion in the world. It was not the question whether religious people would support religious institutions; but was it right and equal that men who have no regard for religion should not give their aid to the support of religious establishments, which were acknowledged to be so essential to the interests of the community? He thought not. Gentlemen had spoken of difficulties which had arisen under the third article. These might be avoided. One man had lost 300 dollars—because he would not pay his money without a lawsuit. He should not suppose he would have conscientious scruples about paying money. The gentleman from Malden had had a lawsuit, and had spent thirty dollars to save twenty. This was very likely, but it was no argument. There will be lawsuits; and it is no argument against the law that there are men who will lead honest people into difficulty. The reverend gentlemen had maintained that with the Jews religion was not supported by the civil government. He had been of a very different opinion. He had supposed if there ever was a nation where religion was supported by law more than any other, it was the Jewish nation. The government itself was a theocracy, and religion was interwoven with the whole frame of it. He believed that however the Convention might dispose of the third article, this proposition would not prevail. He was satisfied that gentlemen would not wipe away the admirable principles contained in the article, merely from the apprehension that there might be some difficulty arising from it.

Mr. MARTIN of Marblehead said that the provision of the constitution had stood unimpaired from 1780 to 1804, when the Legislature undertook to revise it. Chief Justice Parsons decided that he would know no religious society unless it was an incorporated one. He, Mr. M., was then a member of the Legislature, and the table of the house was crowded with petitions for acts of incorporation. Our Saviour said that where two or three were assembled together in his name, there he would be in the midst of them—but the committee have said, that it shall take twenty to make a religious society. He argued that religion would be supported without any legislative provision, and complained of inconveniences which persons were subjected to who were not of the prevailing denomination. He was in favor of the resolution.

Mr. QUINCY said he did not rise to take part in the debate, but to suggest that it was not proper at this time to take the question, as there were gentlemen who were desirous of expressing their sentiments on this subject. He wished also that gentlemen might have an opportunity to analyze the proposition, and for that purpose that it

might be printed. The proposition appeared to him to be entirely inconsequential. If he could suppose the gentleman from Pittsfield to be of a mischievous humor, he should think he intended to bring that grave assembly into ridicule. His proposition is—as religion and morality are essential to the happiness of a people, and as they cannot be supported without the institution of public worship, therefore no person shall be classed for the support of public worship. He moved that the committee should rise and report progress. The motion was agreed to—and

The House adjourned.

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FRIDAY, DECEMBER 22.

The Convention met at 9 o'clock, and attended prayers offered by the Rev. Mr. Jenks. The journal being read, Mr. DRAPER of Spencer moved the following order :

*Ordered*, That no original proposition to alter and amend the constitution shall be received by the Convention after Monday next.

He explained his object to be to expedite the progress of business and aid in bringing it to a close.

Mr. QUINCY thought that such an order could not have any effect in leading to the object intended. It was negatived.

On motion of Mr. QUINCY, the order of the day being the unfinished business of yesterday was postponed, and the Convention went into committee of the whole on the report of the select committee, to whom was recommitted their former report on that part of the constitution relating to the governor, militia, &c. Mr. DANA in the chair. The resolutions reported by the committee as substitutes for those which they had before reported, were then read as follows :

1st. *Resolved*, That it is expedient so to alter the constitution as to provide, that the day on which votes are annually to be given in for governor, shall in future be the day of instead of the first Monday of April: and that the "first Wednesday in January" be substituted for the "last Wednesday in May," in every place where these words occur in the first section of second chapter of the second part of the constitution.

2d. *Resolved*, That it is expedient to alter the constitution so that hereafter the governor, with the counsellors, or any four of them, may hold a council for ordering and directing the affairs of the Commonwealth.

3d. *Resolved*, That it is expedient so to alter the constitution, as no longer to require the governor to dissolve the General Court on the day preceding the day of the general election.

4th, *Resolved*, That it is expedient so to alter the constitution as to provide, that notaries public shall hereafter be appointed by the governor, with advice of council, in the same manner as judicial officers are appointed.

5th. *Resolved*, That it is expedient so to alter the constitution as to provide, that officers commissioned to command in the militia may be removed from office in such manner as the Legislature may by law prescribe.

The blank in the first resolution was filled by inserting the first Monday of November, and the five resolutions were severally read

and agreed to ; some remarks explanatory of the views of select committee being made on several of them by Mr. VARNUM.

The following resolution, reported by the same committee on a proposition referred to them, was then read :

*Resolved*, That it is not expedient to alter the constitution, so as to provide, that no able bodied citizen, between the ages of eighteen and forty-five, be exempt from military duty, or an equivalent therefor, the judges of the supreme judicial court, ministers of the gospel, and quakers excepted.

Mr. VARNUM said that to adopt the proposition would be running counter to the long established practice of the Commonwealth, of exempting militia officers who had served a certain number of years, judges of courts and other persons, whom the General Court had seen fit to exempt. The Legislature were perfectly competent to act on the subject, and if any change in the laws was expedient they could make the change. No provision in the constitution was necessary.

Mr. FREEMAN of Sandwich spoke against the resolution.

The resolution was then agreed to.

The following resolution reported by the same committee was taken up :

*Resolved*, That it is expedient so to amend the constitution, as to provide, that in case the offices of secretary and treasurer of the Commonwealth, or either of them shall become vacant, from any cause, during the recess of the General Court, the governor, with advice of the council, under such regulations as the Legislature may prescribe, shall appoint a fit and proper person to such vacant office, who shall hold the same, until a successor shall be appointed by the General Court.

The resolution was agreed to.

The following resolution reported by the same committee was then taken up :

*Resolved*, That it is not expedient so to alter the constitution, as that the captains and subalterns of the militia shall be elected by the members of their respective companies, without regard to age.

Mr. VARNUM said that the committee thought it inexpedient to make an alteration that should give minors a right of voting in the choice of militia officers. They were denied the right in all other elections, and he saw no reason why a different principle should be adopted in relation to the important elections of militia officers.

Mr. FISHER of Lancaster moved to amend the resolution by striking out the word "not"—so as to reverse the import of the resolution.

The question was taken on the amendment, and decided in the affirmative—147 to 135.

The question recurred on the resolution as amended.

Mr. NICHOLS of South Reading spoke in favor of the resolution. Doubts had been entertained whether minors were eligible to office because they were not voters. But if they were excluded from holding office in the militia it would be a great injury. They form the best officers ; they are the soul of the soldiery.

Mr. VALENTINE of Hopkinton thought it of great importance, and

it was the opinion of the officers of the militia generally, that minors performing militia duty, should have the right of voting for subaltern officers. When the choice was made it was necessary that the whole company should be called together because there was no way of distinguishing who were under twenty-one years of age and who were over. Those who were under age were therefore liable for a fine for non-attendance. They were often elected to subaltern offices and frequently commanded companies, and made the best officers in the militia. Men under age were much more useful than those over thirty and forty. A man thirty years old is not worth much in the ranks, and above forty he is worth less than nothing in the common militia companies. He said it had been the practice, before the time of Governor Sullivan, for minors to vote in the choice of their officers. But it was decided by him, no doubt correctly, that the practice was unconstitutional. Since that time it had been prohibited. This prohibition had created great uneasiness and confusion in the militia, and had greatly diminished its spirit and utility.

Mr. MATTOON of Amherst was one of the select committee and was in favor of the alteration. He had experienced great difficulty from the denial of the right of voting to minors enrolled in the militia. A great deal depended on the young men when they first came into the trainbands, and it had a very injurious effect on them to refuse their votes in the choice of their officers.

Mr. VARNUM said that minors had in some instances been chosen as officers in the militia. But as far as his observation had extended they were very few. But who were they chosen by? It was by men of mature age who were competent to judge of the qualifications for office. He thought it a violation of general principles to permit minors to vote for officers of the militia, and to exclude them from voting in all other elections.

Mr. VALENTINE mentioned another consideration which had before slipped his mind. Minors when elected to be officers were entitled, as soon as chosen, to give their votes in the choice of field officers. The number of minors so elected within his knowledge was considerable. The commanding officer of the regiment was the most important officer in the militia, yet the minor who was prohibited from voting in the choice of captain and subalterns, might be elected to the command of a regiment, which was, in fact, the most important office in the militia.

Mr. MARTIN was in favor of the resolution as amended. Washington was an officer when he was under twenty-one years of age. He hoped that such boys as he, would not be deprived of the right of voting for their own officers.

Mr. FAY of Cambridge was on the select committee but he did not agree to the report. He was in favor of the resolution as it was amended. His reason was, that it would tend to produce harmony in the militia. The duties of the militia were burdens, and it was proper to make them as light as possible. It was a different case from the choice of civil officers. The minors serving in the militia,

may be perfectly competent to judge of the qualifications for a subaltern office and not competent to judge in other matters.

Mr. TALBOT of Stoughton was in favor of the resolution as it was amended. In other elections minors have their parents and guardians to vote for them. It is not so in the militia.

Mr. MACK of Middlefield said, that when the constitution was adopted, young men were required to serve in the militia at sixteen years of age. They were not now, until they were eighteen. There might be a good reason for not admitting minors to vote at that time which would not apply now. The militia have great burdens to bear, and they should be so treated that they may bear them cheerfully.

Mr. HORT of Deerfield would not object to the proposition if it could be confined to the specific object now in view. But if we once opened the door to persons under age to vote for officers of the militia, we should be obliged to do it so that they may vote for officers of every description. It will be argued that every male person of fifteen years of age is liable to a tax, and why should they not be entitled to vote for the representatives who are to assess the tax on themselves? If he was sure it would stop here, he would vote for the resolution.

Mr. PARKER of Boston said, that the same constitution which provided that minors should vote in the election of militia officers, would provide that they should not vote for other officers.

Mr. APTHORP of Boston was opposed to the resolution, because he thought that the arguments in favor of it would be urged for extending the right to other elections.

Mr. SULLIVAN of Boston was in favor of the resolution. He said that the constitution of the United States and of the Commonwealth required young men, not of age, to perform certain important duties. They were important, not only to those who were in the militia, but were very material to those who stay at home. The men so employed were to be commanded by certain persons, to be elected by a part, or the whole of those who were in the ranks. Was it to be supposed that any part of them would serve so cheerfully if deprived of their voice in choosing those under whom they may be called to risk their lives. The minor is warned to all meetings for the choice of officers. If he is absent he must pay a fine; if he is there he can do nothing. It is a hard duty to serve in the militia, for which there is very little encouragement. This was not connected with any other elections. It was a case by itself. If minors were permitted to vote, it would relieve one of the embarrassments that attend the service. If the militia was to be kept up at all, it must be done by the influence and example of those to whom this article refers.

Mr. BEACH of Gloucester spoke in favor of the motion. He had been eight years an officer in the militia, and it was the opinion of officers that it would be useful to extend the right of voting to all

who were enrolled in the service. One third of the officers in the brigade to which he belonged were minors.

Mr. SLOCUM spoke in favor of the resolution.

The question was taken on agreeing to the resolution as amended, and decided in the affirmative.

A motion that the committee rise and report progress, was negatived—139 to 192.

The following resolution, reported by the select committee above described, was then taken up:

*Resolved*, That it is not expedient so to alter the constitution, as to make any provision therein, respecting persons who have religious scruples about bearing arms.

Mr. VARNUM said, that the select committee considered this as a legislative act, and were of opinion that the Legislature would make such exceptions from time to time as they should think proper. He did not think it expedient by a constitutional act to deprive the Legislature of the power to make such regulations as experience should show to be necessary.

Mr. ENOCH MUDGE of Lynn was happy to hear the explanation of the chairman of the select committee, and the opinion that the Legislature had the right to grant the relief which was demanded. But he said that in the constitution of other states, permanent provision had been made for this object—and he wished it might be done in the constitution of this Commonwealth. He said that there were persons besides Quakers who had religious scruples against bearing arms, and it was useless to enrol them and to attempt to compel them to perform a service which their consciences would not permit them to perform. They were willing to bear their portions of the public burthens, and if they were permitted to pay a sum equivalent to the performance of military duty, to be appropriated to the maintenance of the poor or to the support of government, they would be satisfied.

Mr. HORT thought that ample provision was made already for the object—authority was given by the laws of the United States, for regulating the militia, to the legislatures of the states to make such exemptions as they should see fit. He quoted a passage from the law in support of his opinion. He was opposed to the resolution.

Mr. TILLINGHAST of Wrentham thought the gentleman did not understand the state of the case. The law of the United States, to be sure, gave the legislatures of the states power to exempt such persons as they should see fit. But if the constitution of the Commonwealth deprived them of the power, they could not exercise the discretion. He hoped the resolution would not prevail. There were other persons besides Quakers who had conscientious scruples against bearing arms, and he saw no reason why they should not be entitled to the same exemption from the obligation. He thought that the adoption of an amendment that should extend the exemption to all persons who had conscientious scruples, was but an act of justice to those who have those scruples, and that it would have a most beneficial effect on the community.

The question was taken and the resolution adopted.

The following resolution reported by the same committee was then taken up :

*Resolved*, That it is not expedient so to alter the constitution, as to provide, that in future the captains, subalterns, non-commissioned officers and privates of the militia of the Commonwealth, shall severally be exempted from the payment of a poll tax, during the time they may be liable to do military duty.

The resolution was agreed to, and the committee rose.

The resolutions were then severally read in convention a first time, and passed to a second reading and assigned to tomorrow at 9 o'clock.

On the reading of the resolution relating to religious scruples against bearing arms, Mr. WARE of Boston moved to amend it by striking out the word "not," so as to reverse the import of the resolution. Some debate arose, after which the motion to amend was negatived and the resolution passed.

Leave of absence was then granted to Mr. PRINCE of Newburyport, Mr. WESTON of Middleborough, Mr. ABRAHAM LINCOLN of Worcester, Mr. SIBLEY of Sutton, and Mr. HOLMES of Kingston.

*Declaration of Rights.*—The House went into committee of the whole on the declaration of rights ; Mr. VARNUM in the chair.

On motion of Mr. PARKER of Boston, Mr. CHILDS of Pittsfield had leave to alter his resolution so as to read as follows :

As the happiness of a people and the good order and preservation of civil government essentially depend upon piety, religion and morality ; and as these cannot be generally diffused through a community but by the public worship of God ; and as the public worship of God will be best promoted, by recognizing the inalienable right of every man to render that worship in the mode most consistent with the dictates of his own conscience ; therefore no person shall by law, &c. (as in Wednesday's proceedings.)

Mr. WILLIAMS of Beverly said, that some gentlemen seemed to suppose, that all who were in favor of the present proposition, were in favor of removing all religion from the State. He wished to remove this impression. He considered that religion was of great consequence to the Commonwealth, and that the government should protect all persons in the enjoyment of their religious rights and privileges. He was opposed to the present provision in the constitution. He understood that the third article allows a tax which favored one religious denomination, and he understood that the report of the select committee had the same object. He thought the terms of the constitution were not so explicit and intelligible as some gentlemen had asserted. He admitted the premises in the third article, but not the conclusion. He considered that liberty of action and of opinion was given by the constitution to only one religious denomination, that of Congregationalists. He denied that the operation of the constitution had been equal, as the gentleman from Concord had asserted ; but he said some persons had been obliged to pay, where they had received no benefit. Sometimes the taxes of minor children were paid to the support of public worship where the father attended, and where they did not. He understood it had been said



that persons might go from one society to another at their pleasure. He denied the fact. He mentioned that in one town there was a society, comprising almost all the inhabitants, and that afterwards a society of Congregationalists grew up there, and taxes paid to the treasurer were applied to the support of this worship in consequence of the provisions of the constitution. He thought this was unequal. He agreed that contracts between the teachers and societies ought to be enforced; although some gentlemen thought otherwise. He did not apprehend, if the present proposition were adopted, that the Sabbath would be neglected, that public schools and other benevolent institutions would go down; for we had experience to the contrary. He objected that it was impossible to enforce the present provisions. He thought it unfair to say that religion did not take care of itself originally, because it was protected by its author; for its author had no power to protect it; except so far as miracles went—our Saviour derived no aid from the civil arm. He said that under the word *Protestant*, which applies to a great many varieties of religion, the government had established one particular denomination. He denied the propriety of mixing civil and religious institutions. When in the dark ages, from which we ought not to take example, the amalgamation of these two distinct things was made, it was done for improper purposes, and was attended with mischief. The people had no right to establish any religion, whether Protestant or Catholic, or any other. He hoped the substance, at least, of the proposition of the gentleman from Pittsfield would be adopted.

Mr. SPRAGUE of Malden said it was a tyranny in the highest degree, to compel a man to worship in a manner contrary to the dictates of his conscience. He thought the second and third articles clashed amazingly; the second article he admired, the third he thought absurd. Religion was an affair between God and our own souls. He concluded with eight lines from the poet, the purport of which was, that it was vain to attempt to bind by human laws the soul, which was accountable to God alone.

Mr. FOSTER of Littleton said he was opposed to the present propositions, and to the report of the select committee. He agreed with the gentleman from Beverly that when a contract was made between a religious teacher and his flock, it ought to be enforced; but the gentleman in admitting this gave up his argument that the civil government should not interfere in the support of religion. In answer to the gentleman from Boston (Mr. BALDWIN) he would say that the same sacred person who commanded his disciples to take no purse or scrip, also said that the laborer was worthy of his hire. He cited other examples from scripture to show the propriety of clergymen having a regular support. Gentlemen had said this should be done freely. He said it was done so under our constitution. Though the name of a tax was become odious, nothing could be more voluntary than the people taxing themselves. Gentlemen had talked a great deal about church and state—about civil authority, (that awful creature,) about the base amalgamation of religion and

civil government. They say that religion and civil government cannot exist together. If that was the case then one of them must go out of the world. But he did not apprehend any such result. The magistrate did not put off religion when he put on his robe of office—men did not cease to be Christians by entering into the Legislature. The Legislature was a body of men who were to see that contracts were fulfilled. There was nothing in this contrary to religion. If religion could take care of itself, why does it not go to India of its own accord, without the aid of the numerous societies for propagating the gospel? No; God requires that means should be used for the support of religion. Much had been said about other states having no such provisions in their constitutions; and what was the consequence? They were continually sending to us for ministers, and begging for contributions to support them. In respect to the union of civil authority with religion, he would state a fact,—that between the years 1809 and 1814, there were seventy religious societies made application to be incorporated; and of these there was but one of the denomination of Congregationalists. Why make these applications, if the civil government is of no use to religion? There was no subordination of sects established by our constitution. The provision in this respect was complete. If there was any society that did not enjoy equal privileges with every other, he would not leave that assembly without doing everything in his power to effect that object. He did not believe the third article could be rendered much better by the wisdom of any body of men. It enabled people to worship where they pleased. There was a proposition before the committee to suit the case of those unfortunate persons who do not belong anywhere, and who do not intend to. He would have them belong somewhere, and behave themselves like men, and bear their proportion in the support of society. Religion was so essential to private happiness and public security that he would not do anything to lessen its influence. This depended a great deal on the ability of the public teachers. But if you have no preacher except a beggar, what will follow? He had been told that it had already become a common saying—the more ignorance the more grace. He hoped we should never give up that principle in our constitution which lies at the root of all that is valuable and sacred in society.

Mr. DEAN of Boston said he was not concerned, lest he should be thought to be inimical to the Christian religion; that if christianity had done nothing more, than to teach men that they had equal rights, it would be entitled to everlasting veneration. He venerated the class of men who devoted their lives to its services, and he wished that they might have an ample support. The question is not whether we shall abolish this religion, but in what manner it can be best supported, so as to be most beneficial to mankind. He was on the side of those who were in favor of a support, by the voluntary contributions of the lovers of this religion; and for several reasons. In the first place, the kingdom of this religion was different from the

kingdom of this world, and ought not to be governed by the laws of this world. Civil governors do not know what belongs to the Christian religion, and are therefore incapable of bestowing rewards and imposing restraints in regard to it. He was glad to hear his colleague, (Mr. BALDWIN) yesterday mention the evils which have arisen from establishing national religions. When our religion had its greatest power, and spread with the greatest velocity it was not owing to miracles, or to force, but to argument. It was never intended by the author of religion, that it should be established and promulgated by the civil power, or by compulsion. It was intended that its teachers should be supported, not upon air, but by the voluntary contributions in temporal things, of those who received from them spiritual things. Another objection to the article as it now stands, was, that it made the teachers too independent of those who were instructed. A mutual dependence was productive of mutual benefit. It was said that government had a right to levy taxes. He agreed that it had for political purposes; but it did not thence follow, that they had a right to support public worship by taxes. It was said that religion must be supported by means. It was true; but it should be by spiritual means, and not by the same as those by which we manage our temporal concerns. If it is left to heaven to support religion, religion will be supported.

On motion of Mr. FAY of Cambridge, the committee rose—221 to 66—reported progress and had leave to sit again.

A motion was made to adjourn—negatived, 118 to 236.

A motion was made that when the House adjourned, it should adjourn to half past 3 o'clock, P. M.

Mr. FOSTER and Mr. MARTIN opposed the motion, and Mr. MARCY of Greenwich spoke in favor of it. The motion was decided in the affirmative.

The House then adjourned.

#### AFTERNOON SESSION.

The Convention met according to adjournment, and went again into committee of the whole, on the unfinished business of the forenoon, viz., the resolution offered by Mr. CHILDS.

Mr. CHILDS spoke at some length in support of the resolution.

Mr. HOLMES of Rochester said that he had attended carefully to the arguments *pro* and *con*, but there were some doubts on his mind that had not been settled. It was a principle that had been repeatedly recognized by gentlemen on both sides, that the duty of religious worship is an affair that civil government has nothing to do with, and lies exclusively between God and the soul. That it was an indefeasible right of every one to worship God according to the dictates of his own conscience, was universally conceded. But it is contended that notwithstanding he has this right, the community has a right to impose upon him a tax to support what he believes to be heresy. Mr. H. wished gentlemen to reconcile these two propositions. He did not see the difference between being obliged to

attend on religious instructions against his conscience, and advancing money to support such instructions. He knew that money was not religion. But we were as much obliged to withhold money demanded for supporting heresy as to exercise the duties of religious worship according to our own conscience. He saw no difference in the principle ; if there was any, he wished gentlemen would show it. He proceeded to notice the arguments of gentlemen against the resolution. The gentleman from Boston, in answer to the argument that religion would support itself wherever it was not interrupted by the hands of power, said that in the primitive ages, Christ was on earth and did not need the support of the civil authority. Mr. H. asked why he needed it now ; it must be either because he had power then, which he has not now, or because he has not the inclination now to support the cause of religion. The gentleman might take which result he pleased. The gentleman from Boston had taken a view of the decalogue to show that it had been the foundation of laws since. But he omitted a very material commandment, Worship the Lord thy God and him only shalt thou serve. This was pronounced under the severest penalties. The decalogue enjoined two classes of duties, those to our Maker, and those to our neighbor. The first of these did not come within the powers of the Legislature. The gentleman from Chelsea had said that when Constantine assumed the power to establish religion it was corrupted ; but who is to judge ? Had not Constantine the same right to judge that we have ? It was proposed to substitute the word Christian for protestant in the third article. He was at a loss to know what either of the words meant. We had a right to limit our religion to either, or to the religion of the Grand Lama as much as either. There was no reason to be given but that the majority of the Convention was in favor of it. Another argument was, that the people have a right to make such provision as shall be for the general good. Who is to judge what is for the general good ? If the Legislature can judge of this, there is no need of a constitution. The gentleman from Littleton had quoted the passage of scripture, they that preach the gospel shall live by the gospel—but he did not tell what it was to live by the gospel. He should have said live by the law. The same gentleman had asked, why we support missionary societies and bible societies ; was there ever a cent of the money for the support of these raised by a tax ? Gentlemen apprehended that if this resolution passed, in a very short time gross darkness would envelop the people. He asked if that was the case now, in the town of Boston ? Did they not support religion as well as in towns where it was supported by a tax ?

Mr. SALTONSTALL said he rose with unusual embarrassment, because the subject had been so ably discussed, and still more, because of its intrinsic importance ; he thought it more important than any that had been considered. It is a trifling question comparatively, how the council shall be chosen, or whether there be any council ; whether the senate be founded on valuation or population, or how the house of representatives is modified—we shall have a Legislature

so constructed as to insure a free government—but strike out the constitutional provision for the support of public worship, and who can tell the consequences? As was said by the able gentleman from Boston, (Mr. BLAKE) we have heretofore been inspecting the superstructure—we are now examining the foundation, and he doubted not the result of the examination would be that the foundation would be found laid firm and deep, and capable of sustaining a superstructure that may rear its lofty head to the skies. Two questions arise—first as to the right of government, and second, whether there is anything in the subject—religion—which should prevent or restrict this right. There is no subject upon which such inadequate views are entertained as the duty, and of course the right, of government. A stranger acquainted with this subject, would be surprised at some of our debates upon the rights of the people in framing a government. They have a right to adopt such measures as will promote the happiness of the people and the good order and preservation of civil society. Whatever tends to promote these great objects, it is the duty of government to cherish and support, because these are the objects for which government is instituted. The design of government is not merely the security of life against those who would attack it, and property against those who would plunder it, but to improve the character and condition of those who are subject to it. Mr. S. enlarged upon this point. Is it true then, that the happiness of a people and the good order and preservation of civil government, do essentially depend upon piety, religion and morality? All seem to admit this, and yet their tendency to promote these great objects has not been sufficiently considered. The Christian religion is the great bond of civil society. It teaches us that we are all children of one beneficent Parent, who constantly watches over us for good, who notices all our actions, and will hereafter reward or punish us, as they have been good or evil. It teaches us that God is everywhere present, that he knows our most secret thoughts, that he sees us where no human eye can, and will call us to account when human laws cannot reach us. What an immense effect would the single doctrine of *accountability* have on the conduct, if properly realized. Our religion also contains the most comprehensive as well as minute directions for our conduct towards each other, declared under the most tremendous sanctions—all our hopes of happiness, all our fears of suffering; directions, which in proportion as they are obeyed, supersede the necessity of human laws. But this is not all—

“How small, of all the ills that men endure,  
That part which laws or kings can make or cure.”

It is on the observance of duties of imperfect obligation, which human laws cannot reach, but which are the great care of religion, that our happiness essentially depends. Can the regulations of society make us kind and affectionate and faithful in the relations we bear in life? Religion extends to the heart—human laws concern actions alone. Religion cleanses the fountain that it may send forth pure streams to refresh society. Christianity also furnishes a model

of the character she would form. Moreover, it reveals to us the perfections of Jehovah, the great object of worship and source of all good, and commands us to be "perfect as he is perfect." Who then can doubt that the happiness of a people and the good order and preservation of civil government do essentially depend upon such a system of "piety, religion and morality." These are principles in which all agree—the essential principles of *piety, religion and morality*. The constitution then asserts that these cannot be generally diffused, but by the institution of public worship and instruction. Mr. S. enforced this. It then follows as a necessary inference, that to promote these great objects, the people have a right to invest the Legislature with the power, &c. (as in the constitution.) And why not this as a *civil institution*, as well as any other means for the same end? It provides a most beautiful and liberal system; making it the duty of towns and parishes to make this provision, but consistently with perfect religious freedom. No denomination is established. The election is given expressly to each society, and of course to the majority of each. There is no more hardship in being obliged to contribute towards the support of a minister than any other teacher. You may have no children to send to school, or may dislike his opinions, or his mode of instruction, or may be willing to contribute to the same object in some other way—but the tax you must pay. The right of society in both cases rests on the same foundation—the right to tax for the common good; and the reason is the same, the common benefit received, as members of society. Objections have been made to the abstract right of government, and to the particular provisions of the constitution. It is strange how much sensitiveness there is on this subject. No one hesitates to confer on government the power of inflicting any punishment, even death itself, for any crime; but the moment you would attempt by the influence of religion to destroy sin in embryo, an alarm is excited! Mr. S. then answered the objections made against granting the Legislature any power on the subject of religion,—as, that "religion is under the protection of the Almighty, who will take care of his church;" that "his kingdom is not of this world." His kingdom is not of this world in the highest sense, because our final reward will be in another; but in a most important sense it is, because it would make us good members of society—would prepare us for a better state by making us good in all the relations of life. We are told that the *kingdoms of this world* will become the kingdoms of our Lord. May not governments coöperate in this glorious design? (Mr. S. noticed other objections, which we have not room to insert.) We are told that the constitution grants exclusive favors to one denomination. Will gentlemen read the constitution? No language can be plainer. It is most explicitly declared that "every denomination shall be equally under the protection of the law." It is elevated far above all partial considerations—it regards all in the equal favor as all agreeing in the same essential principles, and leading to the same great object, the Father of all. If one parish alone, in some places where there are

several societies, have the right of taxing non-resident lands, &c. it is because they have been left in the possession of this right. When a part of a parish (referred to Lynn) became Methodists, they separated, and petitioned for an incorporation with certain powers, which were granted, have they any right to complain? And so of the other societies, and the little remnant is left with the obligation to support public worship, and would you deprive them of their ancient rights? Would you punish them for adhering to the religion of their fathers? There is nothing exclusive in this—it would be the same, should the majority of a parish be of any denomination. This principle is not confined to parishes; it is the same as to towns. When a part is separated, the remainder has all the rights of the town not expressly granted to the new corporation.

It is said also to be inoperative. It is indeed too inoperative, and ought to be made more effectual; but this objection does not well come from those who complain of it as *exclusive* and *oppressive*. Some little cases of individual hardship have been stated, and some law suits have grown out of it, in which however those who complain, claim always to have obtained a remedy. What general law is there, or what part of the constitution against which such objections may not be made? They prove nothing against a great principle. But it is said some do not go to meeting, and shall they pay for what they receive no benefit? They do receive a benefit in the greater security of everything dear to them. One objection was not to be expected—"that ministers were now too independent!" The great objection that meets us at every turn is that "religion will take care of itself." Where has this experiment been tried? Not in Europe. I know not where except in Asia Minor; and where are now the "seven churches"? Those golden candlesticks have long since been removed. We are referred to the support of dissenters in England, and of the various denominations here, but does it appear that this support would have been given, except religion had been established in England, and provided for in our constitution? In this country the fearful experiment is still in process, whether religion will take care of itself, and as far as tried, it has not been successful. Mr. S. then referred to several states, where, except in large cities, very few settled clergymen of education are to be found. As to the unequal operation of this article in Boston, &c., by its own terms it does not operate on any place where voluntary provision is made. Its indirect influence does much everywhere. Mr. S. made objections to the report of the select committee, and showed in what manner he thought the resolution under consideration would produce the same effect as expunging the third article. Is it then expedient to abolish this provision? It is for the advocates of the change to prove this beyond all question. Show the evil it has produced. Point to the oppression it has caused. Whose rights of conscience have been violated? Go not back a century for cause of persecution—point them out under the constitution. If a few cases of individual hard-

ship have happened in the course of forty years, cannot the same thing be said of every part of the constitution? And is it wonderful, under a system extending through the Commonwealth and operating on so many thousands? Mr. S. then argued that there had been no oppression, no general complaint—referred to the small vote for a Convention as proof that no great evil was pressing on the community. But from the clamor that has since been raised, one would suppose we had been ~~groaning~~ under an inquisition! It is strange how men are carried away by sounds. What excesses have been committed under the name of "liberty," what excitement may be produced in a perfectly free country by the cry of "Priestcraft"—"Law-religion," and "Toleration!" This subject is closely interwoven with our history. We ought not to make a constitution on abstract principles merely. What arrangement it is expedient to make here, is a very different question from what it might be in some other states, where a similar provision has never existed. The support of religion has always been a great care of our government. Massachusetts is a religious Commonwealth. But for the devotion of our fathers to religion, the spot where we are assembled, might still have been a wilderness. It was this that inspired them with courage to brave the dangers of the ocean, and land on these shores. Their first care was the support of public worship. How soon did they lay the foundation of our venerable University, and "*Christo et Ecclesie*" was it dedicated! As the settlements extended, the little colonies of families always took with them a minister, as the pastor of the flock, and one of the first houses erected was always a place of worship. To provide religious instruction was always an important part of the municipal concerns of each town, and the same laws were made on the subject of schools and public worship. Through the whole period of our history, religion and education had gone hand in hand, and united in forming the character of the people. The temples of worship and instruction have been side by side. Our religious establishments are part of our system of education, schools of a higher order, to furnish instruction in "piety, religion and morality." How great and good must have been the influence of such institutions. To gather together in the house of God, and there be reminded of their common relation to our Father and to each other; to listen to the sublime doctrines and moral precepts of christianity—what a great though silent influence must it have had—"it falls like the gentle rain from heaven"—"it distills like the early dew." Mr. S. then described the manner in which the State had been divided into parishes, each with its pastor, &c.; the salutary effect produced on the character of the people, and the cause of learning and civil liberty. Mr. S. thought the adoption of the resolution would end in the destruction of very many religious societies, not immediately; the good influence of our institutions may prevent that. Our temples of worship will decay and fall around us. Those beautiful spires that now ornament our towns and villages will fall to the ground. The effect on the character of the clergy will be



pernicious; the inducements to enter into the profession will be lessened, and there will be no permanency in contracts with ministers. The dissolution of so many religious corporations will be an act of great violence. We have heard much of the corporate rights of towns—we must not touch them, even if necessary to correct the greatest evil under the constitution, the numerous house of representatives—no, corporate rights and privileges are sacred things. And are not the rights of parishes quite as ancient and sacred and much more important? If any evils, correct them—but why destroy several hundred corporations? Allusions have been made to the errors of our ancestors. Time, which tends to the abuse of all human institutions, has improved ours. The bigotry and persecution are gone—nothing remains but the good influence. Never was there a denomination of Christians less sectarian, and proselyting, and persecuting, than the prevailing denomination in Massachusetts have been under this constitution. I say it with confidence. Some have strange fears of an establishment! But what is to be established? How is it to be brought about? Will the government undertake the work? Have the church accumulated treasures for this purpose? Have we a body of aspiring ecclesiastics aiming at this object? But how can an establishment be made under a constitution which declares that “no subordination of one sect to another shall ever be established by law,” except the broad establishment of christianity. And this without interfering with the rights of conscience of any man. The question may now be, whether a great moral revolution shall take place in the Commonwealth. If this article is struck out, what a shock will it give to the moral sentiments and feelings of thousands,—the pious, the moral part of the community, who feel that we have no right to deprive them of what was designed for the good of posterity as well as our own. I stand as in the presence of our ancestors; they conjure us not to destroy what they planted with so much care, and under the influence of which we have so long flourished; but to transmit to posterity what is only a *trust-estate* in us. I stand as in the presence of posterity, calling upon us not rashly to abolish what was intended for their good—their entailed estate, their precious inheritance. Let us not in one hour destroy the venerable work of two centuries! Above all, on this day, the anniversary of the landing of the Pilgrims—when two centuries have rolled away, and we by means of their principles and their institutions have grown up and become a great nation—let us not reject the great principles of our prosperity—let us not overthrow all that was dear to them. This will be a poor tribute to their memory, a poor expression of our gratitude. No—let us bring a better offering—let us cherish those principles and institutions, and transmit them to our children and to children’s children to the latest posterity. This will be the most durable monument to the memory—the best memorial of the character of our forefathers.

Mr. HAZARD of Hancock rose only to express his sentiments in

favor of the resolution. He said a spectator hearing these debates would be led to think that the question was whether any person should be suffered to worship God hereafter or not. He considered the question to be, whether the article proposed by the gentleman from Pittsfield, should be substituted for the third article of the declaration of rights. He hoped the motion would prevail. As far as his knowledge extended, whenever the aid of law had been resorted to for supporting religious instruction, it had produced great dissensions and difficulty. If he believed that by retaining the article in the constitution it would make good men he should be in favor of it. But he thought it would make two hypocrites to one Christian.

Mr. SULLIVAN of Brookline rose merely to state a historical fact. He had hoped that the gentleman from Salem, who had almost exhausted the subject, would have alluded to the history of this particular article. As early as the year 1654, it being found that the support of the clergy was not sufficiently provided for by voluntary contributions, a law was passed authorizing the court of sessions to levy a tax for the purpose, whenever the people did not voluntarily make suitable provision. In 1692 a similar act passed, and in 1703 another substantially the same. In this last act, Quakers and Baptists were excepted from the obligation. In 1760 another act passed recognizing the power of the people to support religion in this way, and the necessity of such a power. Then came the constitution in 1780, the provisions of which are substantially the same with the laws before mentioned. This emanated from the body of the people—the source of all our laws—that with which we are all identified. It has been our misfortune to see a state of feeling growing out of sectarian prejudices, very honest in themselves, opposed to this salutary principle of the constitution. Those who have these feelings are right to act according to their own conviction, and to endeavor to obtain an alteration. But considering that the great body of the people were Congregationalists, was it to be asked that they should give up what they considered an important principle? He thought the opposition had come not from the great body of the people, but from a portion adverse in point of principle to the sentiments of the great body.

Mr. NICHOLS of South Reading was surprised at the course the discussion had taken. He should think that the question was whether religious worship should hereafter ever be supported. It was not so. He had looked at the proposition of the gentleman from Pittsfield, and he did not see that it departed in any degree from the law of 1811. He was satisfied with that law. It was an honor to the Legislature that passed it. He had seen no injury from that law.

Mr. SAVAGE of Boston rose only in consequence of the remarks of the gentleman who last spoke. He was in the Legislature when the law of 1811 passed; he opposed the passing of that law with all his might. But the evils which he apprehended from it had not happened. That law had given perfect satisfaction. The inconven-

iences which gentlemen have complained of must have taken place before the passing of that law. It was because he was satisfied with the law of 1811 that he was decidedly opposed to the proposition of the gentleman from Pittsfield. That law provided that every person shall be classed with some religious society. But the proposition from the gentleman from Pittsfield is directly the contrary. It declares that no person shall be classed. He was aware it provided that persons who were now classed should continue until, &c. But it was provided for the present time only. He was willing that every one should have a right to declare what society he would belong to, but every man, so long as he lives in civil society, ought to contribute to the support of that religion which is at the foundation of that society. Gentlemen referred to the establishment of schools. It was not until after the establishment of religious worship, that common schools were established in this country. It was not until 1645, twenty-five years after the settlement of the country, that town schools were established even in the largest towns. The common schools are the children of religion, and religion not the child of town schools. He hoped that the children would never succeed to destroy their mother.

Mr. BANNISTER of Newburyport said the opposition to retaining the third article rested on two grounds, one in relation to the right, the other to the expediency. And with respect to the expediency, it was urged in the first place, that inconveniences arose out of the present system, and in the next that religion would flourish better without the interference of the civil authority. What were these inconveniences? Before a good system, accompanied with some inconveniences, was exchanged for another, it ought to be shown that the inconveniences outweighed the general good resulting from it. There were cases of hardships under the present system, as had been mentioned by gentlemen, but they were single cases, and what was the character of them? They discovered a spirit of opposition to the general good—of selfishness—to call it by the gentlest name, of too great tenaciousness of strict rights. This objection had been fully answered by the gentleman from Boston (Mr. DUTTON.) All general rules are liable to exceptions.

We should consider how extensively the general principle operated, and how few were the particular cases opposed to it. A hundred thousand polls were taxed for the support of public worship. Was there any comparison to be made between the good derived from this payment of taxes, and the cases of individual hardship which had taken place? Gentlemen had said that religion would flourish better without the present provision of the constitution. This was taking for granted a thing that remained to be proved. Such an assertion was not a sufficient reason for overturning a long established system. And from whom did this argument come? From gentlemen who say they want no aid from the civil government, because they can get along without it. If that is the case, why, then do they who are so well off and who are in a minority,

why do they trouble themselves so much about the interest of the majority? Perhaps they feel kind towards the other part of the community? be it so; but they say this article is to build up an exclusive sect. And this from the mouths of those who admit no one of another sect to their communion. But if these gentlemen are able to get a sufficient support, it is not so with all; and they have succeeded because religion generally is so well supported in this State; as was shown by the gentleman from Salem, (Mr. SALTONSTALL) who referred to the condition of religion in other states. But grant all that belongs to their argument; it is begging us to give up the fruits of an experiment of forty, yes of two hundred years, with all its known consequences, for an experiment of a day; and that made by a small sect. As the gentleman from Boston (Mr. FREEMAN) said, let other states try their experiments; we are going on very well. If they do better, we can then imitate their example. He thought sufficient had been already said to establish the right. ~~He thought the doubts on this question arose from gentlemen's~~ considering it too abstractedly. They talked of inalienable rights and rights of conscience. What do they mean by rights of conscience? They were so conscientious they could not take an oath. What next? They have scruples about bearing arms. One gentleman, to be sure, says they are willing to pay an equivalent to be applied to the support of the poor. Next day they will have scruples about paying this equivalent—they will have scruples about serving as jurymen. At this rate what shall we come to? Gentlemen reason very impracticably if not absurdly. We must do with religion as we do with other principles. We must make it useful to the common good. Our happiness and the security of society are dependent upon it. Some gentlemen say leave religion to heaven; but they do not go so far as to say that they will not permit the civil power to interfere for the purpose of enforcing their contracts. It is asked whether we injure religion by adopting this resolution. He thought it would be laying the axe to the root of the tree. He did not attribute wrong motives to the gentlemen who supported it, but this would be the effect. What would become of our common schools if left to voluntary contributions? of all our other institutions? He contended that they as well as religion would all sink if not sustained by the arm of civil government. He felt, as the gentleman from Salem did, that we had received a legacy which we owed it to our ancestors, to our posterity and to ourselves to transmit unimpaired.

The question was then taken on the adoption of the resolution offered by Mr. CHILDS and determined in the negative—161 to 221.

The committee then voted to rise—217 to 45—reported progress and had leave to sit again.

The House then adjourned.

SATURDAY, DECEMBER 23.

The Convention met, and, after the reading of the journal, proceeded to the second reading of the resolutions reported by the select committee, on that part of the constitution which relates to the governor, militia, &c.

The resolution providing that the governor and council shall appoint notaries public, was amended, on motion of Mr. VARNUM, by inserting the words, "who shall hold their offices for seven years, unless sooner removed by the governor and council, upon the address of both houses of the Legislature," and, so amended, it passed. All the other resolutions were severally read, and passed without amendment.

*Third article of Bill of Rights.*—On motion of Mr. MOSES PORTER of Hadley the Convention then went into committee of the whole on the unfinished business of yesterday, it being the report of the select committee on the declaration of rights.

The third resolution being stated to be under consideration—

Mr. NEWHALL of Lynnfield hoped the resolution would not pass. He was sorry to differ from the committee, and nothing but a sense of duty would have induced him to rise on the occasion. It was necessary that there should be provision in the constitution for the support of religious worship, and the maintenance of the teachers of religion. The provision made by this resolution was not sufficient for the purpose. It provided that towns and parishes should levy taxes for the purpose, but at the same time provided the manner in which any person who chose it could exonerate himself from the payment of these taxes. He has only to call on the committee of some other denomination, or of some other society of the same order, and pay the trifling sum that they may demand—and it is well known that there are religious teachers in almost all parts of our State, who do not ask much for preaching, and who, of course, will furnish a pass for a very small sum—and those who think the acquisition and preservation of property to be the most important object of life, will adopt this mode, and think it a valuable saving. He had no objection to paying his proportion of the necessary taxes for the support of the ministry, on the principle that it was for the public benefit—but he saw no reason why he should do more. The practical operation of this article of the constitution had been very unequal, by restricting persons from going to another society of the same order with that in which they happen to reside. This report proposes a remedy, by permitting persons to remove their connections from one religious society to another. But there was a very strong objection to it, for any persons could easily evade the obligation to contribute their proportion. It is proposed, that when any number of persons, not less than twenty, shall have associated for the purpose of maintaining public worship, they shall not be liable to be taxed for the purpose elsewhere. Twenty persons thus associated, who may be at the expense of four or five dollar sermons per year, which would be a tax of one dollar upon each per-

son, will thus be excused from all other taxes for the support of public worship. The tax upon these twenty persons, in the parish to which they belong, may amount to half or two thirds of the whole tax of the parish for the regular support of a public teacher, and their withdrawing may leave the town destitute of the means of regularly supporting public worship. Now if these twenty persons were holden to pay their proportion of the sums necessary for the support of public worship, in such manner that it should be actually expended for that purpose, by being paid over to some public teacher, if not to the minister of the parish, public worship would be maintained in some form or other. If this article could be so amended, as effectually to draw from the community such sums as would be competent to remunerate religious teachers for devoting their time, talents and learning to the work of the ministry, by an equal tax upon all the ratable polls and property in the several towns in the Commonwealth, he (Mr. NEWHALL) would not raise his voice or hand against it; and he should have no objection, that after the taxes should have been paid into the town treasuries, every person should have a right to draw out the sum paid by him, to be paid over to the teacher of any religious denomination whatever. He wished to see nothing in the constitution that looked like giving any exclusive privilege, or showing any partiality to any one denomination. He concluded by offering as a substitute for the third and fourth resolutions of the select committee, a proposition so to amend the constitution, that towns, parishes, &c., shall have power to make provision for the support of public worship, by levying taxes for the purpose upon polls and estates within their jurisdiction—that every person so taxed, shall have power to designate the religious teacher to whose benefit the amount of his tax shall be appropriated, provided there is any one whose instruction he usually attends—and that the taxes of those who do not attend on the religious instructions of any one, shall be appropriated to the use of the schools in the town or society.

Mr. QUINCY wished the mover to state the precise object of his motion, and to point out the difference between the provisions of his resolution, and those of the third article of the declaration of rights.

Mr. NEWHALL said it was not essentially different from the third article. It would remove an objection which some men make to paying taxes for the support of religious teachers, that they go to hirelings, and to support heresy. All agreed in the propriety of supporting schools. He saw no reason why all should not pay equally for the support of religion, because it was necessary for society and the preservation of government.

Mr. QUINCY said the proposition struck him agreeably enough, except the last part of it. He did not see why the taxes paid by those who do not attend public worship, should not be applied to the support of religion, just as much as that the taxes paid by bachelors should go to the support of schools.

Mr. NICHOLS of South Reading said, that in a town where there was a settled Congregational minister, and the dissenters from that religion were a majority, and of a sect which was opposed to supporting public worship, except by voluntary contributions, if the dissenters were not allowed to vote, the minority might say what sum should be raised; and if they were allowed to vote, no sum would be raised. The settled minister would then lose his salary.

Mr. BALDWIN opposed the amendment. He said that if all the denominations in a town should assemble and vote to raise a certain sum for the support of the settled minister, and then each of the other denominations should draw out from the sum raised, what belonged to each of them, there might be too much, or there might be too little, left for the settled minister. He did not see the propriety or expediency of one denomination assessing taxes for another, and thought that every society had better manage its own concerns.

The question was taken upon the amendment, and determined in the negative.

The question recurred upon the third resolution.

Mr. BALDWIN moved to strike out *shall*, and insert *may*—so as to read, that the Legislature *may* from time to time require towns, &c. to make suitable provision, at their own expense, for the support of public worship. Mr. B. said there was not a town anywhere, where provision was not made. There was, therefore, no necessity for saying that the Legislature *shall* require, &c. It ought to be left to the discretion of the Legislature, so that if they see a town neglecting to support public worship, they may then interfere if they see fit.

Mr. FOSTER of Littleton hoped the amendment would not prevail. Some gentlemen would say that *shall* and *may* mean the same thing; if so, then let *shall* remain. If they substituted *may*, the Legislature might make it an apology in all cases for neglecting their duty.

Mr. SULLIVAN of Boston asked if the word *shall* had not been in our constitution forty years, and if all our institutions for public worship had not grown and flourished under it? if so, why should it be changed?

Mr. BLISS of Springfield said that if gentlemen were satisfied that provision will always be made voluntarily, they need have no fears of the interference of the Legislature; for if they would attend to the connection of the sentence, they would perceive that it is only in cases where provision is not made voluntarily, that the Legislature *shall* require it to be made. It was the general sentiment of the select committee, and he presumed of the present committee, that public worship ought to be supported. Our institutions for that purpose had been owing to this word *shall*. Because there had been no gross violation of the law, should we say the law was unnecessary? We ought rather to say the law had been

obeyed. It did not follow that the law was bad, because there had been no gross violation of it; the object of laws was to prevent wrong, not to punish it. The silent influence of laws was a thousand times more beneficial than the actual enforcement of obedience to them. It was impossible to foresee the operation of the change proposed. If we struck out the word *shall*, it would amount to saying that we had not been a happy and virtuous people. If it was true that the happiness of society depended upon the diffusion of religion and morality; and if the institution of public worship, and of public instructions in religion and morality, was the only means of diffusing them, it would be improper to leave it to the discretion of the Legislature to see that suitable provision was made for effecting the object.

Mr. HUBBARD of Boston said this was in his view a very important question. He was in favor of substituting *may* for *shall*. He was clearly of opinion that the community had a right to make laws on the subject of public worship, on this principle, that what it is the duty of the citizen to perform, it is proper for the Legislature to compel him to perform. But he preferred the word *may*, because the community have no power, no tribunal, to compel the Legislature to do a particular act. If the Legislature should do an act which it had no right to do, then there was a remedy, because the supreme court would determine it to be unconstitutional. The constitution would have just as much force, if it were left to the conscience of the Legislature to make provision for the support of public worship. The committee had already agreed to leave out the clause in the third article which says, "the Legislature shall enjoin attendance on public worship." The Legislature never carried it into effect and there was no power to compel them.

Mr. LOCKE of Billerica interrupted the gentleman, to mention that the constitution does not say that the Legislature *shall* enjoin attendance, &c., but that the people invest them with authority to enjoin, &c.

Mr. HUBBARD said there was the same moral obligation on the Legislature to enjoin attendance upon public worship as there was to require suitable provisions to be made for the support of public worship. He denied that our happiness and good morals were owing to the third article; on the contrary, that article grew out of our good morals. New Hampshire had omitted it in her constitution—Connecticut and Rhode Island had no such provision; and if we were making a new constitution, we should leave it out, if the popular sentiment was against it. No law was passed until 1800 to enforce this provision; so that it remained for twenty years a dead letter, and we were living under the operation of former laws on this subject. He said there was nothing imperative in the word *shall*, where the constitution says it shall be the duty of the Legislature to cherish public schools; because the same phraseology is used with respect to their countenancing sincerity, good humor and the social affections. He repeated his objection to commanding the



Legislature, when there is no power to enforce the command. *Shall* meant the same as *may*, and we might safely trust to the Legislature to do what was proper.

Mr. PARKER of Boston said there was an inconsistency in his colleague in saying that *shall* and *may* meant the same thing and yet wanting one to be substituted for the other in the constitution. His Rev. colleague (Mr. BALDWIN,) did not understand them to mean the same thing, or he would not have moved the amendment. Mr. H. had objected to *shall*, because there was no power to coerce the Legislature. Mr. P. said there was hardly a page in the constitution, in which similar phraseology did not occur; and he understood it as an expression of the will of the people to which the Legislature were bound to conform; and although there was no tribunal to coerce them, the people had it in their power to choose other legislators. He said if the word *shall* should be struck out, the next Legislature would have their feelings, and would repeal all the laws for the support of public worship. Mr. H. had said our institutions for the support of religion were not owing to this article. He had no authority for the assertion. This article had been a long time an important principle in our constitution, and it was impossible to say what effects were owing to its operation.

Mr. TILDEN of Hanson thought the amendment too trivial to occupy the time of the committee.

Mr. TILLINGHAST of Wrentham spoke in favor of the amendment.

Mr. HOAR of Concord said the gentleman from Boston, (Mr. HUBBARD,) had said that if *shall* was peremptory, it would be of no avail, as there was no power to coerce the Legislature and that we might trust to the conscience of the Legislature. As the legislators were required to take an oath to support the constitution, on the gentleman's own ground their conscience would not permit them to violate this oath, and therefore the word *shall* would have some validity.

The amendment was negatived—151 to 203.

Mr. WILLIAMS of Beverly said he had advocated the proposition offered by the gentleman from Pittsfield. Difficulties had arisen under the third article. With a view to unite the views of the committee, and of their constituents at large, he had prepared a resolution which he would offer as a substitute for the third and fourth resolutions of the select committee. Mr. W's resolution contained the third resolution of the select committee, except that *do invest* was substituted for *have a right to invest*; and instead of the fourth, it proposed that every religious society, incorporated or unincorporated, should have power to raise money for the purposes of the society, in such manner as they should choose,—that every person should be at liberty to unite himself to such society as he pleased, and the moneys paid by him should go to the support of the teacher of such society; and that every person who did not class himself voluntarily with any society, should be classed with the town, parish or precinct in which he lived, and be taxed for the support of

public worship in such town, parish or precinct. Mr. W. said his object was to allow freedom to every person to worship where he pleased, and to permit societies which prefer supporting their teachers by subscription, to adopt that mode instead of taxation.

Mr. THORNDIKE of Boston opposed the resolution, and alluded to local transactions in the town of Beverly.

Mr. Low of Beverly, in answer to Mr. THORNDIKE, went into a detail of some individual cases of hardship in that town.

Mr. WARE of Boston had no doubt of the right of the community to make laws on the present subject, and as far as he understood the proposition of the gentleman from Beverly, he did not perceive that it was objectionable.

Mr. QUINCY objected to the form in which the amendment was brought forward. Here was a long proposition differing only in a sentence or two from the resolutions of the select committee. It was difficult in this mode to see in what the difference consisted. Small amendments should be proposed in those parts of the resolutions where gentlemen wanted an alteration ; this was one object in having the resolutions printed.

Mr. WILLIAMS replied that he adopted this mode for the sake of making the proposition simple. The mode of striking out and inserting, was apt to cause confusion.

Mr. D. DAVIS of Boston thought that no gentleman could have a clear and precise idea of the effect of the proposition before the committee until it should be printed, that they might have an opportunity of comparing it with the present article of the constitution, with the act of 1811, and with the report of the committee. It was a proposition to remedy all the evils complained of under the present constitution, and had never seen the light until within a few minutes. They ought not to be driven to vote on a proposition which they had no better opportunity to understand. He therefore moved that the committee rise.

The motion was negatived.

Mr. WILDE thought that there was nothing in the resolution before the committee materially different from the third resolution of the select committee, and that the mover would better obtain his object, if instead of making his proposition a substitute for both resolutions, he would so modify it as to make it a substitute for the fourth only. Accepting the third resolution would be only affirming the vote of last evening. All the difference between it and the third article appeared to be that it put incorporated and unincorporated societies on the same footing.

Mr. WILLIAMS then withdrew his resolution reserving the right to move that part of it which proposed the principal alteration as an amendment to the fourth resolution, when that should come under consideration.

Mr. JACKSON of Boston thought the time had now arrived when the amendment proposed by Mr. SALTONSTALL could be conveniently considered. It had been determined not to reject the general prin-

ciple contained in the third article. He should be glad to adopt the amendments proposed. He would not let a non-resident withdraw the tax on his lands, for the same reason that taxes for schools and highways should not be withdrawn. It was for the interest of the persons owning lands, that public worship should be supported. He wished also another amendment, that should allow all persons to withdraw their support from the parish in which they reside, in favor of another society in which they may prefer to attend worship, though of the same denomination. But he was not so strenuous for either as to urge them so as to endanger the whole article. He wished however that the sense of the Convention might be taken on these amendments.

Mr. SALTONSTALL then moved to amend by substituting for the third and fourth resolutions of the select committee, a resolution importing that it is not expedient further to amend the third article of the declaration of rights, than by providing that the taxes raised upon the real estate of non-resident proprietors, shall be applied towards the support of public worship in the town, precinct or parish in which such real estate shall be situated, and also to provide that the word "Christian" shall be substituted for "protestant."

Mr. SULLIVAN of Brookline wished it to be understood that it had been decided by the highest judicial tribunal, that the law of 1811 was not repugnant to the constitution.

Mr. BLISS of Springfield would be in favor of the resolution with one alteration, but as it was, must oppose it. If it were a new subject he should presume that the supreme court would give such a construction to the constitution, that he should be satisfied with it without alteration. But that court many years ago, composed then of persons who were all members of the convention which formed the constitution, decided that persons must be of a different denomination from the parish in which they were situated, to entitle them to withdraw their taxes for the support of public worship in another society to which they might choose to unite themselves. He could not see in the constitution the grounds of this decision, but he must presume that it was construed rightly. There was a great variety of opinions among persons of the same denomination which made it impossible for them to worship together with propriety. If the gentleman from Salem would provide a further amendment that should remove the difficulty alluded to, he would agree to it. He proceeded to make some remarks on the report of the select committee.

Mr. JACKSON moved to amend the resolution so that it should read in substance as follows : that it is not expedient further to alter and amend the third article, except to provide that all moneys paid by the subject for the support of public worship and of the public teachers of piety, religion and morality, be applied to the public teacher or teachers, if there be any one whose instructions he attends, whether of the same or of a different sect or denomination from that of the sect in which the money is raised ; provided, how-

ever, that taxes raised on the real estate of non-resident proprietors shall be applied towards the support of public worship in the town, precinct or parish in which real estate shall be situated; and also to provide that the word "Christian" shall be substituted for the word "protestant."

Mr. WHITEMORE of West Cambridge said this was the most intolerant proposition ever offered. A person might reside in a town where there was a Congregational society, and belong to a Baptist society in the next town. There were many instances of this kind. Was it right, was it just, that a man should pay a tax for every cent of property he has, to support a church he does not attend, and a kind of doctrine he does not believe? This was tyranny in the first degree.

Mr. PARKER said the gentleman mistook the proposition. It embraced only the estate of a non-resident proprietor.

Mr. TILLINGHAST of Wrentham said all his estate might be in the next town to that in which he resided, and he might belong to a Baptist society in which they did not levy taxes. His whole property would then be taxed to support a religion which he did not wish to support, and he would be deprived of the means to support his own religion. He hoped the proposition would not be ratified; it would be an act of tyranny.

Mr. QUINCY said that the question before the committee was the amendment offered by his colleague (Mr. JACKSON.) The gentleman's remarks applied to the original proposition.

Mr. WILLIAMS said he found himself in a dilemma he did not expect. He had intended to withdraw only the first part of his resolution, intending to reserve the other part of it as an amendment to the fourth resolution.

Mr. QUINCY said that the gentleman was not precluded. He had had the opportunity to explain all his views, and if the committee approved his plan they would not vote for the substitute proposed by the gentleman from Salem, and he would have an opportunity to move his amendment in the proper time.

Mr. DOANE of Phillipston said if he understood the amendment, it gave to a subject, residing further from his own meeting house than from that of an adjoining parish, the right to withdraw, for that reason or for any other personal convenience, and to take with him the taxes paid by him to an adjoining parish, though it might leave his own parish unable to pay their minister. If this was to be the operation of it, which he believed would be, it would leave many small parishes entirely unable to support public worship.

Mr. FOSTER thought this proposition was liable to the same objection with the report of the select committee. The situation of the different religious societies was extremely various. We might as well attempt to make a garment that would suit all sizes and shapes, as to make a regulation that would suit the condition of all religious societies. If we agreed to the third article with this amendment, we should seem to secure the object of providing for the support of

public worship, but should defeat it by giving every one leave to give their support where they please. He was willing that every one should have liberty to worship where he pleased, but his money ought to go to the town or parish where he lives, and where he enjoys the benefit derived from public religious instruction.

Mr. LINCOLN of Boston said he had no personal interest in the question, but he had friends who had; and he asked if the period had not arrived when people might be allowed to pay their money for the support of the gospel where they please. He hoped the question would not be taken without much deliberation.

The question was taken on adopting the amendment and decided in the affirmative—185 to 113.

On motion of Mr. FOSTER the committee rose—188 to 114—reported progress and had leave to sit again.

MESSRS. HALL of Medford, GARFIELD of Tyringham, HORTON and FLOWER of West Springfield, COBB of Orange, HODGES of Taunton, MASON of Swansea, and HYDE of New Marlborough had leave of absence.

Mr. NEWHALL of Lynnfield moved that when the Convention adjourned, they should adjourn to Tuesday next, Monday being Christmas. Negatived. And the House adjourned to 9 o'clock on Monday morning.

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#### MONDAY, DECEMBER 25.

The Convention met at half past 9 o'clock. The journal having been read,

Mr. HYDE of Lenox gave notice that he should tomorrow move, that when the Convention adjourned, it should adjourn to the second Wednesday of February next.

The Convention proceeded to the first reading of the resolutions reported by the select committee on that part of the constitution relating to oaths, subscriptions, &c.

The first resolution which provides that certain oaths shall be taken in lieu of the oaths and declarations heretofore required having been read,

Mr. TUCKERMAN moved so to amend it as to require that any person chosen to the office of governor, lieutenant governor, or counsellor, or to a seat in the senate or house of representatives, shall, after accepting the office or trust, and before entering on its duties, make and subscribe the following declaration: "I ——— do believe in the truth of the Christian religion."

Mr. PRINCE of Boston moved that the resolution and amendment should lie on the table, and be assigned for consideration tomorrow. He said that although he was opposed to the adoption of anything like the amendment proposed, and had already expressed his views fully to that effect, he thought that gentlemen ought to have an opportunity to be heard in support of the amendment. It was now

Christmas day, the house was in consequence extremely thin, and those who felt particularly interested in support of the amendment were principally absent. There appeared to be a great impropriety in taking advantage of the day, and the absence of those who conscientiously pay a respect to it, to expunge from the constitution a provision which many of those gentlemen considered one of the essential supports of the Christian religion.

The motion was negatived.

The question on the amendment was then taken, and decided in the negative, 91 to 126.

The question recurred on the resolution, and it passed to a second reading.

The second resolution, which provides that judges of courts and United States officers shall not hold certain offices, &c., was then read.

Mr. WEBSTER moved to amend, by adding after no judges of any courts of this Commonwealth, the words "except the courts of sessions." The amendment was agreed to.

Mr. ALVORD of Greenfield moved to amend, by adding after the provision that judges of courts of common pleas shall hold no other office, except that of justice of the peace and militia offices—"provided, however, that this amendment shall not operate to deprive any such judge of any office which he now lawfully holds."

Mr. WEBSTER thought that if the amendment should operate immediately upon any office included in it, it ought so to operate on all. He was against the amendment.

Mr. ALVORD said it was a different question, whether a person holding a certain office should be eligible to another, and whether such person shall be deprived of an office of which he is now lawfully invested. He could not reconcile it with his notions of justice, that persons who had accepted offices under the constitution, should be deprived of them by the creation of an incompatibility by an alteration of the constitution.

Mr. LAWRENCE of Groton, Mr. LINCOLN of Worcester, Mr. WILARD of Fitchburg, and Mr. WALKER of Templeton, spoke against the amendment.

The amendment was negatived.

Mr. WEBSTER moved to amend, by inserting among the persons who shall be considered as vacating their offices by accepting the trust of member of Congress, after solicitor general, the words "county attorneys." The amendment was agreed to.

The second resolution then passed to a second reading.

The third resolution, providing for future amendments of the constitution, was then read.

Mr. PHELPS of Chester moved to amend by striking out the words "two-thirds," the proportion of two successive Legislatures who should be required to vote in favor of any specific amendment, before it shall be submitted to the people for their ratification, and inserting "majority."

Mr. WEBSTER of Boston was decidedly opposed to the proposition. If adopted, the whole constitution would be constantly under amendment, and every change of party would effect an alteration in the constitution. The provision that the proposed amendment should be agreed to by the Legislatures of two successive years, would furnish no adequate security. A temporary excitement might influence both, for the whole year might in effect be but from the end of one year to the beginning of the next. He had heard an objection to requiring two-thirds of both houses, from the particular organization of the senate, it being apprehended by some persons, that certain districts might be so associated as to prevent any amendment from taking place. He did not see the weight of the argument, but was willing that the resolution should be so amended as to meet the objection. He would rather have no amendatory provision, than one by which changes could be effected too easily. With a view to meet this objection and to remove all obstruction on this ground to the adoption of the arrangement relating to the senate, he was willing to amend the resolution so as to require only a majority of the senate, but two-thirds of the popular branch.

Mr. PHELPS said that he should be satisfied with this amendment, and therefore withdrew his motion.

Mr. WEBSTER then moved to amend the resolution in such a manner as to require a majority of the senators and two-thirds of the house of representatives present and voting thereon.

Mr. QUINCY opposed the motion. Our ancestors, in framing the constitution, provided for one opportunity only to amend it. They wished the constitution to be steady, and thought it better to leave us to struggle, and let parties struggle, under the constitution, than to permit them to triumph over it. If you require the consent of two-thirds of the senate to effect a change, that body can protect itself; but under this provision, if it should render itself unpopular, the state of political parties may be such as to destroy the organization of the senate.

Mr. AUSTIN of Boston liked the proposition of the committee for effecting amendments. The provision very properly required that the people should not be put in excitement for any party purpose. He was sorry to hear the proposition for amendment. It was against the principle of the constitution, by destroying the equality of the two houses.

Mr. WEBSTER said that he felt obliged to make this article conform to that relating to the senate, otherwise it would be said when we came to the senate, that we must make that conform to this. He wished to have something finished. He was satisfied with the resolution as it was, but a general sentiment had been expressed, that it ought not to be in the power of any two districts, by combining, to defeat any proposed amendment. It was not a principle of the constitution that the two branches are equal. No money bill can originate in the senate. In Virginia all bills originate in the

lower house. No objection was made to requiring two-thirds of the house, and he thought that this, with a majority of the senate, and for two successive years, taking the yeas and nays, with a publication of the amendments proposed, would be a sufficient security.

Mr. APTHORP was unwilling to have alterations too easy. He preferred the resolution as reported.

Mr. J. PHILLIPS of Boston said he understood that the proposed organization of the senate and house of representatives, was on the ground of a compromise, in which a larger proportion of power in the senate was given to the seaboard, to balance the undue influence of the inland parts of the Commonwealth in the other branch. He would therefore propose, that in all amendments relating to the senate, the consent of two-thirds of that body should be required.

Mr. LINCOLN of Worcester said the whole power in relation to amendments, might as well be left to the senate, as to require the consent of two-thirds. If four-fifths, or nine-tenths of the people should, for two years, be in favor of any amendment, unless the senate consented, it would be all in vain. One-third of the senate might be chosen by a little more than one-fifth of the people, and might prevent the wishes of the other four-fifths. As to the danger of altering the government, whose government was it? The people's; and when two-thirds of the people wanted an alteration, they will effect it in some way or other. It would be safe to require the consent, for two years, of only two-thirds of the house; they would have the rights of the people at heart, more than those who represented property. There was no danger of a political excitement continuing two years, so as to have a bad influence on the frame of government. The proposing amendments was not a subject of legislation, and there was no need of a check. He was content with this amendment of the resolution, but he should have liked better to leave the subject to two-thirds of the house of representatives alone.

Mr. SLOCUM spoke in favor of the amendment as compared with the resolution reported by the select committee. Half a loaf was better than no bread.

Mr. QUINCY said that those who maintained the organization of the senate, were on popular ground, as much as those who defended the popular branch. It was for the interest of the people to maintain the senate. The popular branch would be the all-powerful one. According to the compromise, two-thirds of a majority of one half of the people would send two-thirds of the house of representatives. It was all-important to the balance of the two branches, to require the assent of two-thirds of the senate. They had been making a compromise, and he was glad to see it; but he wished the weakest branch to have the power of protecting itself. Whenever there should be violent parties, they would set the principle of amendment at work. He did not wish to see the effect of local interests; he would rather increase the number of the senate. He liked forty better than thirty-six; he wished it might remain; he



liked old numbers. He concluded by moving to postpone the subject until tomorrow, at 10 o'clock.

Mr. STARKWEATHER hoped the motion to postpone, would not prevail. He should have no objection to a provision for amendment, similar to the one in the constitution. He should have been satisfied with the mode reported by the committee; but he thought the amendment under consideration, guarded as it would be by other provisions of the resolution, would be safe.

Mr. QUINCY withdrew his motion.

Mr. HAZARD of Hancock was opposed to both the resolutions and the amendment. If in order, he would move to amend the amendment, so as to leave the power to two-thirds of the house of representatives. The people were the ones to determine whether the constitution should be amended.

The PRESIDENT said this was in opposition to the amendment, and was not in order.

Mr. BLAKE said this was a very important subject, and he moved to have it postponed. His object was, to have a motion offered, to let an experiment be tried, for a limited time, say five or ten years, of the amendments they should make. It would be a pity, if, after so long a session, they should not be able to devise something that would stand the test of at least a few years. The framers of the constitution were so desirous of giving it stability, that they provided that it should not be altered under fifteen years. He should bring in a resolution for the purpose of trying an experiment of this kind.

Mr. WEBSTER had no objection to a postponement; he was, however, satisfied that this was the only advisable way of making amendments to the constitution.

Mr. AUSTIN said he never meant to deny that a majority of the people had a right to alter the constitution, if they had the will; the question was only as to the mode of ascertaining this will. The amendment offered, was said to be on the ground that the house of representatives was a better representation of the people than the senate was; he objected to that reason. Concession enough had already been made by the large towns. The remark was not correct, that the senators from two districts could prevent an amendment from being proposed to the people; thirteen would be necessary for that purpose. When two-thirds of the popular branch were in favor of an amendment, the senate would not resist for light reasons. If these thirteen resisted, he should conclude they were doing the duty for which they were intended. The object in requiring two-thirds, was not to prevent necessary amendments, but such as were unnecessary; to prevent firebrands being thrown among the people to kindle discord. A great many propositions had been made for amending the constitution of the United States, and had been negatived by the people. But this was done in deliberative assemblies, in the legislatures of the several states; which was different from submitting the propositions to town meet-

ings. He would not intimate that the people in town meetings would not determine right, but it would be inconvenient to them to be often called upon. He thought this mode of submitting amendments to the people, by two-thirds of each branch of the Legislature, much better than the one proposed by his colleague, (Mr. BLAKE) of calling a new convention.

Mr. BLAKE said he did not intend to have a new convention called, but to prevent any alteration, in any way, for a limited time.

Mr. BANISTER said that, on the principle of checks and balances, it would be inconsistent to adopt this amendment, after retaining valuation as the basis of the senate. It was as important to the security of the people to protect the senate as the house of representatives. The object in having the small body, was to prevent the effect of popular excitement; and if only a majority of the senate was required, this majority would be very apt to be carried away by the same popular excitement which influenced two-thirds of the house of representatives.

Mr. WEBSTER said he could not sit quiet under the charge of inconsistency. He stated the other day, or meant to state, that the senate was not intended as a check against the people, but against the house of representatives. He knew no principle that could prevent a majority, even a bare majority of the people, from altering the constitution. The object of the mode proposed for making amendments in it, was to prevent the people from being called upon to make trivial amendments, or any amendments, except when a real evil existed. A reason for requiring two-thirds of the house and only a majority of the senate was, that the general sense of the people was better expressed by representatives from small districts, than from large ones. This was not an exercise of legislative power—it was only referring to some branch the power of making propositions to the people. Having a senate to consist of thirty-six members, and twelve of them chosen from two districts, was very different from having fifty senators and chosen from small districts, in regard to the influence of one-third.

The amendment was adopted, and the resolution, as amended, passed to a second reading.

Tomorrow, at 10 o'clock, was assigned for the second reading of these several resolutions.

Mr. BANISTER was appointed on the committee for inquiring what business was required to be done, and when the Convention might have a recess, in the room of Mr. DAVIS, who had left town.

The resolution of the same standing committee, for giving the Legislature power to erect and constitute city governments, as reported by the committee of the whole, with amendments, was read. The amendments for regulating the returns at elections, and for giving the Legislature the right of repealing by-laws of cities, were adopted, without debate.

Mr. VARNUM of Dracut objected to the other amendment, which made it necessary for a town to have 10,000 inhabitants before it

could be incorporated. He said it was desirable to have uniformity in the government of our towns. He therefore wished to have 30,000 substituted for 10,000.

The question was taken for retaining 10,000, and negatived—83 to 136.

A slight debate ensued, in which Messrs. RANTOUL, J. PHILLIPS, STARKWEATHER, JACKSON, and PRESCOTT took part, and various numbers were proposed.

The question was taken for adopting 12,000, and decided in the affirmative—165 to 84.

The resolution as amended passed to a second reading.

The resolution reported by the same select committee, that it is not expedient to make further provision in the constitution relative to the substitution of affirmations for oaths, was read.

Mr. BALDWIN of Boston objected to it. He said it went on the supposition that Quakers were born with different consciences from other men. There were some pious men who had no objections to taking an oath; there were others equally pious, who had. No wicked man would object to taking an oath; and he thought that a solemn affirmation of a good man, made on the presumption that God was present, ought to be sufficient.

Mr. HINCKLEY of Northampton said he had found no reason to satisfy his mind why Quakers had been exempted originally from taking oaths; but the exemption had existed for a long time, and no great inconvenience had arisen from it. He explained his views as to the meaning of the New Testament, where it commands not to swear, and cited a passage from the Old Testament, where God commands to swear by his name. He thought it was proper to have the oath in the name of the Supreme Being. It gave a solemnity to the proceedings in courts of justice, and he hoped no further alterations would be made in the constitution.

Mr. WEBSTER said that as to oaths in courts of law, the Legislature had already ample powers. Gentlemen argued as if nobody had any right except the person called upon to swear; when, in truth, he was the person who had the least right. The party who called him to testify had the right. A man on trial for his life had a right to the testimony of a witness under the sanction of an oath; there was no security otherwise. If the reverend gentleman from Boston (Mr. BALDWIN) had been much conversant in courts of law, he would have seen that the greatest scoundrels sometimes pretend to have scruples of conscience in regard to taking oaths.

Some further debate ensued, in which Messrs. WEBSTER, J. DAVIS, BALDWIN, AUSTIN, NICHOLS, H. LINCOLN, and SPRAGUE took part, relating as well to oaths of office as to other oaths; but as the same arguments were brought forward when the subject was discussed in committee of the whole, and were reported in that part of the proceedings, it is unnecessary to repeat them.

Mr. NICHOLS moved that when the question was taken it should be by yeas and nays. Negatived—only 30 rising in favor of the motion.

The resolution then passed.

A motion to adjourn was negatived—93 to 137.

*Sheriffs.*—Mr. VALENTINE of Hopkinton offered a resolution for providing in the constitution, that sheriffs, registers of deeds, and county treasurers, shall be chosen by a majority of the ballots of the legal voters in the several counties, on the day of

Mr. VALENTINE said he was aware that registers of deeds and county treasurers were now elected in this manner; but his object in including them in his resolution was, that all the county officers, in case the proposition, so far as it respects sheriffs, should be adopted, might be elected on the same day, whenever, according to the terms of their offices, they should happen to be chosen in the same year. Mr. V. moved that his resolution be committed to a committee of the whole.

Mr. STARKWEATHER had not had many minutes to make up his mind on this proposition, but as it was a new subject, and one of not so very great importance, he hoped it would not be committed.

Mr. SAVAGE of Boston said he had not brought forward any proposition himself for altering the constitution, and probably should not; but it was the right of every gentleman making such a proposition, to have it considered; and, by referring this proposition to a committee of the whole, the gentleman who last spoke would have a little time to make up his mind.

The question to commit was negatived—92 to 136.

Mr. VALENTINE said the motion was of more consequence than gentlemen might think. At present the sheriff is appointed by the governor and council. It was one of the most important and lucrative offices in the State. It was important, as well in respect to the creditor as to the debtor. The present mode of appointment gave occasion to many frauds and impositions, and in times of political animosity was made an engine for party purposes and for favoritism. The question was often, not who was best qualified for the office, but who had most friends in the cabinet. Much had been said about the people's rights. In the present case, the people would have a fair opportunity of judging of the merits of the different candidates, and of selecting the one best qualified.

Mr. WILDE rose to a question of order. He said he had voted for committing, on the ground that the gentleman could not discuss his proposition in Convention.

A member who voted in the majority on the question for committing, moved a reconsideration of the vote.

Mr. VARNUM suggested that the gentleman from Hopkinton might accomplish his object without a reconsideration, if he would vary his motion so as to apply to sheriffs only.

Mr. VALENTINE said he had no objection. He only wanted to have the subject considered, which he thought might be done more conveniently in committee than in convention. He modified his proposition according to Mr. VARNUM's suggestion.

Mr. PRESCOTT said this was a proposition for making an impor-

tant alteration in the constitution, and that it ought to be committed.

The question was taken for committing it to a committee of the whole, and decided in the affirmative without a division.

The resolution respecting the pecuniary qualifications of voters, with Mr. BLAKE's amendment that every citizen, &c., who is liable to pay, and does pay taxes, may vote for governor, &c., as passed in committee of the whole, was read.

Mr. NICHOLS moved to amend by striking out "does pay."

Mr. WEBSTER said this came to universal suffrage. He presumed the intention of the mover of the original amendment, was to make every person who voted participate in the support of the government. He had expected that some propositions would have been brought forward, showing the mode in which the original amendment could be carried into effect. He should be content with it, if it could be shown to be more convenient than the old mode. He should object to giving up all pecuniary qualification, though he might be content with the smallest tax. There was a great difference between this and universal suffrage.

On motion of Mr. L. LINCOLN the House adjourned.

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TUESDAY, DECEMBER 26.

The Convention met and attended prayers offered by the Rev. Mr. Palfrey.

Mr. HYDE, in pursuance of notice, moved that when the Convention adjourns today, it shall adjourn to the second Wednesday of February next. He stated, in support of the motion, that the Convention had been in session six weeks, and from the progress of business there was reason to believe that several weeks longer would be necessary. That the General Court stood adjourned to the second Wednesday of January, and that about seventy members of the Convention were also members of the General Court, and would wish to return to their families before the beginning of the session of that body; and that an advantage would be gained by giving an opportunity to the members of the Convention to return to their constituents, and learn their sentiments in regard to the measures which have been under discussion here.

Mr. VARNUM made a few observations upon the motion, and concluded by moving that it should lie upon the table, to be taken up next week.

The motion was agreed to—166 to 30.

Mr. PRESCOTT, from the committee to whom the question was referred, submitted the following report:

The committee appointed to inquire what business now before the Convention or in committee, the public interest requires should be done, and at what time an adjournment or rising of the Convention may take place, have attended to that subject, and now respectfully report:

That the report of the select committee on the subject of the judiciary power, and the resolution respecting the tenure of judicial offices, have been referred to the committee of the whole, but have not been acted on therein.

That the report of the select committee on the preamble to the constitution and the declaration of rights has been acted on, but not finished, in the committee of the whole.

That the report of the select committee on the subject of oaths, subscriptions, &c., and on the resolution which respects the authorizing of the Legislature to grant city powers in certain cases, have passed the first reading in the committee.

That the report of the select committee on the subject of the University at Cambridge and the encouragement of literature, &c., has been acted on in committee of the whole, but not finished.

That the report of the committee of the whole on the resolution relating to the pecuniary qualifications of electors is now before the Convention.

That the report of the committee of the whole, on the subject of the senate and house of representatives, and on the resolution providing for the representation of all the classed towns for the years when the valuation shall be completed, are before the Convention, and have not been acted on therein.

That the report of the committee on the subject of lieutenant governor and council, is before the Convention, and has not been acted on therein.

That the resolution respecting the office of solicitor general has been referred to the committee of the whole, but has not been acted on therein.

And your committee further respectfully report, that in their opinion the public interest absolutely requires that the reports of the committee of the whole respecting the lieutenant governor and council, and respecting the senate and house of representatives, and also as to the mode of proposing amendments to the constitution, and on the subject of authorizing the Legislature to grant city powers in certain cases, should be acted upon and disposed of before the Convention adjourns; and that an adjournment may take place on Tuesday, the second day of January next.

All which is respectfully submitted.

By order of the committee,

WILLIAM PRESCOTT.

On motion of Mr. VARNUM the Convention resumed the consideration of the resolution relative to the pecuniary qualifications of voters. The question being stated on the motion to amend by striking out the words, "and does pay," so as to extend the right of voting to every inhabitant who is *subject to pay taxes*,—

Mr. NICHOLS withdrew the motion.

Mr. BLAKE then moved to amend the resolution so that the right of voting shall be extended to "every male inhabitant being twenty-one years of age, resident in the town where he offers his vote for one year, and having paid or been subject by law to pay taxes in the said town," with exceptions and provisions in relation to paupers and persons exempted from taxation.

Mr. BLAKE said that he was not the advocate of universal suffrage. That doctrine could not be sustained on any principle. No person who did not contribute to the support of government was so far a party to the social compact as to have a right to a voice in the election of the officers of government. But every person whose situation in life was such that the Legislature could demand of him a tax, if it were nothing but a poll tax, on the principle that representation and taxation ought to go together, ought to be entitled to a vote. Being subject to a tax he considered equivalent to having paid a tax. To put the right on the ground of actual payment of a tax, or of having been assessed, would be to put the right of suf-

frage in the power of the assessors in a manner wholly inconsistent with the rights of the citizen. He inquired on what ground of principle any person subject to be taxed could be excluded, and proceeded to state the principles on which other persons, such as minors, aliens, and females, were excluded. In relation to the last class of persons he said that the subjects of the laws were made up of families, and that in all families there were two departments. The home department was one in which women have not only the right of suffrage, but the right of sovereign control. He proceeded to state a variety of arguments in support of the principle which he had laid down, and to show its consistency with the other principles of the constitution.

Mr. VARNUM agreed with the gentleman who last spoke in most of the principles he had advanced, but not in his conclusion. He stated a number of objections to the amendments proposed, and his reasons for preferring the resolution as agreed to by the committee of the whole. He did not believe the inconvenience would be so great as was apprehended, or that there was any danger of the abuses of power on the part of assessors, which gentlemen say they may practice if the resolution is adopted. He objected to that feature of the amendment that required a year's residence in a town before acquiring a right to vote.

Mr. BLAKE thought that it would not be correct to extend the right of voting to all persons that might be casually in town at the time of election. But he was willing that the term of residence should be fixed at six months.

Mr. DANA said that there were some persons who would come to the polls, if there was no term of previous residence required, who ought to be excluded. There are probably a thousand or fifteen hundred persons who come into the State every year in March, and get employment as laborers, who do not intend to make it their permanent residence, and who therefore ought not to have a voice in the choice of officers of government. He thought that a year's residence ought to be required; that although it would operate injuriously in some few instances, the number would be so small as not to counterbalance the advantages. He stated an amendment which he proposed to offer in case that under consideration should not be adopted.

The question was then taken on Mr. BLAKE's amendment and negatived.

Mr. DANA then moved that the resolution should be so amended that the right of voting should be extended to every male citizen of twenty-one years of age, who has resided in any town of the Commonwealth for one year, and who has paid any tax in the Commonwealth for the year next preceding the election, or who has not been assessed, and ought by law to have been assessed, &c.

Mr. FOSTER said, that not only taxation and representation, but taxation and suffrage ought to go together. Young men of twenty-one years old were subject to a poll tax and to the obligation of per-

forming military duty, which is a heavy tax. He thought they ought to be admitted to the right of voting.

Mr. APTHORP thought there would be difficulties in carrying the provision of the amendment into effect. He thought it would be better to let the right depend on the fact of having actually paid a tax for the current year.

Mr. LOCKE of Billerica moved that the resolution and proposed amendment be committed to a select committee.

Mr. LINCOLN opposed the commitment.

The motion to commit was then agreed to—179 to 115—and

Messrs. DANA, LOCKE, APTHORP, VARNUM and LELAND were appointed.

The Convention then proceeded to the order of the day—it being the second reading of the several resolutions, read the first time in convention yesterday.

The first resolution, substituting an oath of allegiance and an oath of office, for the oaths, subscriptions and declarations required by the constitution, was read and passed.

The second resolution declaring the incompatibility of offices, was also read a second time as amended, and passed.

The third resolution providing for future amendments of the constitution was read as amended.

Mr. QUINCY opposed the resolution, because he was not satisfied with the amendment by which a majority is substituted for two thirds, in relation to the senate. He contended that the senate was an independent body, and that it was important that it should be kept independent and not liable to be carried away by any popular current. He considered the power of the senate to preserve its independence, a material part of the balance of the two houses. He supported this position by a variety of arguments.

Mr. WEBSTER repeated the grounds on which he made the proposition. It occurred to the committee that with the experience which we had had of the constitution, there was little probability that, after the amendments which should now be adopted, there would ever be any occasion for great changes. No revision of its general principles would be necessary, and the alterations which should be called for by a change of circumstances, would be limited and specific. It was therefore the opinion of the committee that no provision for a revision of the whole constitution was expedient, and the only question was in what manner it should be provided that particular amendments might be obtained. It was a natural course and conformable to analogy and precedent in some degree, that every proposition for amendment should originate in the Legislature under certain guards, and be sent out to the people. The question then arose, what guards should be provided? It was thought proper to provide that an amendment should not be proposed and sent out to the people under the influence of a popular excitement. To prevent this they proposed to require the repeated assent of the Legislature; and the question, in the mean time, would be in some meas-



were tried by the people, who would express their opinions in the next election. This was one of the guards which they proposed, and another was, that the measure should be assented to by more than a bare majority of the two houses. They agreed to propose that two thirds of both houses should be required. But it had not been decided at that time in what manner the senate should be constituted. The number of that body was afterwards fixed at thirty-six. It had been heard repeatedly in debate that if the senate is organized in the manner proposed, and two-thirds of the senate are required to assent to any amendment it would be in the power of less than a third of the people to prevent any amendment. It was true that such would be the effect. Under these circumstances some of the committee were of opinion that satisfaction would be given if two thirds of the popular branch only were required, and a majority of the senate. Would not this furnish a reasonable security against unreasonable alterations? He thought that no great reliance would be placed on the additional check of two thirds of the senate. If two thirds of the other branch should repeatedly insist on any particular amendment, the senate would be obliged to yield to it. If an attack was made upon the rights of the senate there was no reason to suppose that a majority of that body would consent to sacrifice them.

Mr. SALTONSTALL was opposed to the resolution as amended, and stated the grounds of his dissatisfaction at some length.

Mr. HOYT was in favor of the amendment, if the number of the senate was to be fixed at thirty-six. If the number were increased to forty he should be opposed to the amendment.

Mr. APTHORP had serious objections to the amendment when it was proposed yesterday, and those objections had not been removed, but on the contrary had been strengthened in his mind by reflection. He thought that the senate would be composed of men as intelligent and as much disposed to consult the will of the people as the other branch of the Legislature. He proceeded to state his reasons against the resolution as amended.

Mr. VARNUM considered the constitution as the work of the people, and ought to be subject to alteration by the people. He agreed that the senate should be put on an equal footing with the house of representatives, but he would do it by bringing the house to the senate, and not the senate to the house. But if he could not obtain all the improvement that he wished, he would take as much as he could get. It was with this view that he voted for the resolution yesterday. He quoted a part of the bill of rights which it had not been proposed to change, to show that in the view of the framers of the constitution, all the rights of self-government were vested in the people, and by the people was meant a majority of the people. He argued that there was an inconsistency in admitting the right of the people to establish government, and excluding them from acting on an amendment or change of the constitution by such an obstruction as had been proposed.

Mr. FAY was opposed to facilities in amending the constitution, and had been in favor of a provision that should limit the right of offering amendments to certain periods, in preference to having it open at all times. He had been discouraged from offering the proposition, but he was extremely sorry to hear the motion for the amendment of the proposition of the select committee. The gentleman who moved the amendment had said that if the senate had consisted of a larger number he should not have been in favor of the amendment. Mr. F. was in favor of enlarging the senate, and with a view that this question might be first acted on, he moved that the resolution now before the Convention be laid on the table.

Mr. LINCOLN was opposed to the postponement, and stated his reasons at some length.

The motion to lay on the table was negatived.

Mr. PARKER of Charlestown moved to amend by inserting after "a majority of qualified voters," the words "voting thereon." The amendment was agreed to.

Mr. PICKMAN, in reply to the remarks of the gentleman from Dracut, said he did not consider it a question what power should be vested in the people, but what power should be vested in the Legislature. He agreed that the people are the sovereigns of the country, and that a majority must control the will of the people. But the question now was, what powers should be given to the Legislature. He was opposed to give the power of proposing amendments to two-thirds of the house and a majority of the senate. He should be contented to take three-fifths of the senate.

The question was then taken on the resolution and it passed.

The resolution providing that the Legislature shall have power to grant charters of incorporation to towns of more than 12,000 inhabitants was then read and passed.

Mr. FISHER of Westborough rose to make a motion. He recollected that the Convention of 1780, when they had made about the same progress as had now been made by this Convention, thought proper to choose a committee to form an address to the people, stating the reasons of the convention in favor of the constitution. We had not been so fortunate as to be unanimous on all the amendments that had been agreed to, and he thought it would be likely to have a favorable effect in reconciling the people to the amendments that should be proposed, if the same course were now adopted. He therefore moved that a committee be appointed to prepare an address to the people to accompany the amendments that should be submitted for their ratification or rejection.

Mr. FOSTER opposed the motion.

Mr. SLOCUM was in favor of it. He had been trying for a week past to conjure up some reasons by which he might satisfy his constituents of the propriety of the measures they had been adopting. He hoped the committee would be more successful.

Mr. SAVAGE and Mr. BLAKE spoke in favor of the motion, and it was agreed to. It was ordered that the committee consist of five.

Mr. HYDE of Lenox offered as a substitute for the third and fourth resolutions of the select committee in relation to religious worship, a resolution declaring the natural and inalienable right of every individual to worship God according to the dictates of his conscience, the right of opinions and sentiments, and the right of religious societies, incorporated and unincorporated, to elect their teachers. The resolution does not propose any legal provision for the support of public worship.

The resolution was committed to the committee of the whole, who have that subject under consideration. A motion to print it was negatived—115 to 158.

Leave of absence was granted to Messrs. BLOSS of Cheshire, STEBBINS of Granville, CRANE of Northborough, MARCY of Greenwich, HAPGOOD of Petersham, and MARCH of Salisbury.

Leave was refused to Messrs. STOWELL of Peru, BARNARD, FOLGER, MITCHELL and BURRILL of Nantucket, Messrs. LYMAN of Goshen, and HAZARD of Hancock.

It was ordered that two persons should be added to the committee on leave of absence. Dr. WARREN of Boston, and Dr. STARK-WEATHER of Worthington were added.

Mr. HINCKLEY of Northampton offered a resolution proposing to amend the constitution, by adding an article in the declaration of rights, that no person shall be subjected to trial for any offence which would subject him to ignominious punishment, except on presentment of a grand jury of the county in which the case is tried, except in cases to which law martial may be properly applicable. He stated his reasons for offering the resolution. Committed to the committee of the whole on the declaration of rights.

It was ordered that when the House adjourned they adjourn to half past 3 o'clock this afternoon.

Adjourned.

#### AFTERNOON SESSION.

Mr. PHELPS of Chester offered a resolution proposing to add another article to the declaration of rights, that no man or class of men shall ever be deprived of the right of being elected to office or be exempted from taxation, on account of any lawful profession or calling; provided however, that the Legislature may exempt from taxation ministers of the gospel whose estate does not exceed \$1000 in the whole.

Referred to the committee of the whole on the declaration of rights—89 to 84.

Mr. HOAR of Concord offered two resolutions, which he designed for a substitute to the third and fourth resolutions reported by the select committee on the declaration of rights. The first resolution was, that it is expedient to substitute "Christian" for "protestant" in the third article of the declaration of rights. The second resolution was, that it was inexpedient to make any further alteration in the third article than what is already made and is proposed to be made by the first resolution.

Referred to the same committee of the whole—144 to 47.

*Third Article of the Declaration of Rights.*—The House went into committee of the whole upon the report of the select committee upon the preamble and declaration of rights; Mr. VARNUM in the chair.

The question was upon the amendment, as amended on Saturday, offered by Mr. SALTONSTALL as a substitute for the third and fourth resolutions of the select committee on the declaration of rights.

Mr. L. LINCOLN of Worcester said it had been his misfortune or his fault, he would not decide which, to be absent, the three days in which the present subject had been under discussion. He should not say much on the merits of the present proposition in a religious point of view, but should make some remarks upon it as involving a question of property more suitable for the consideration of the civilian than the divine. The proposition contained a provision for taxing the lands of non-resident owners for the support of the clergymen of the society which happened to be the first in any town. Against this as a civilian he dissented. He was in favor of supporting religion, and as the father of a family, if he were reduced to the alternative, he would prefer that his children should have the moral and religious instruction of Sunday rather than the literary instruction of the other six days of the week. Man was a religious animal, and would fix upon one object or on another for his adoration. Whether it was better to support religion by the civil government was a question for others to decide. He would proceed to examine what influence the present proposition would have in a civil view. Persons would be taxed in consequence of it for the support of a religion which they disapproved. This was a tyranny which no freeman ought to endure. The proposition was to give the taxes of lands of non-residents for the support of the minister of the first society in any town, although contrary to the wishes of a majority of the corporators of such town. Formerly the bounds of towns and parishes were coextensive. Suppose a town and parish of this kind to have been founded one hundred years ago, when all the inhabitants were of one denomination. It was a corporate duty of such town to support religion, just as it was to support the poor or maintain the highways. Since the incorporation, various other denominations spring up and far exceed in number the members of the original society; yet the effect of this proposition will be, that the taxes of the non-residents will go entirely to the support of the old parish minister alone. A society might exist by these taxes, when it was obsolete for every other purpose. In a town near to Worcester, the teacher was half supported by these taxes, while his religious principles were totally abhorrent to those of the majority of the inhabitants of the town. Mr. L. had no proposition of his own to bring forward, but his object was to show the monstrous impropriety and absurdity of this amendment.

The question was taken on the amendment and determined in the negative—15 to 226.

Mr. PARKER of Boston moved that the committee should proceed to the consideration of the resolutions offered by Mr. HOAR as a substitute for the third and fourth resolutions of the select committee.

Mr. WILLIAMS of Beverly objected to the motion, on the ground that his proposition ought to have the priority.

Mr. BLAKE wished, if it was possible, that the resolutions of the committee might be acted upon on their merits, without being buried up by the great number of amendments continually offered. As a circumstance in favor of this course, he stated that that committee had sat longer than any other of the select committees and had devoted a great deal of attention to this subject.

Mr. WILDE supported the motion to take up Mr. HOAR's resolutions in order to procure the sense of the House, whether it was necessary to make any further alterations in the third article. His view was this; that the committee having settled that it was proper to provide for the support of religion, it only remained to see whether any modification were necessary as to the manner of making this provision. He should have no objection himself to several modifications; so it was with other gentlemen; but there was so little harmony among them, as to any one particular modification, that it would be difficult to come to any satisfactory result. And he believed the third article might well remain as it is, since the Legislature had the power to make all the modifications which had been proposed. The existing laws have made the provisions required, and they have been sanctioned by a judicial decision, which makes it satisfactory. It was improper to encumber the constitution with the details of legislation. He thought the resolutions of the gentleman from Concord were previous in their nature, and ought to be taken up before the resolutions of other gentlemen.

Mr. BALDWIN of Boston spoke against the motion.

The committee voted to take up Mr. HOAR's resolutions—180 to 175.

The resolutions were read.

Mr. WARE of Boston inquired whether it was necessary to vote upon both resolutions together.

The CHAIRMAN thought the question was not divisible.

Mr. WEBSTER suggested that although the question for striking out and inserting was indivisible, yet, as it was proposed to insert two resolutions, the question was divisible, as to the matter to be substituted.

Mr. TAFT inquired what would be the effect of adopting this amendment.

The CHAIRMAN said it would do away all further questions on the third article.

Mr. MORTON objected to the course of proceeding. He thought the third resolution only was before the committee. No man could move to strike out two resolutions. He had been waiting for an opportunity of giving his opinion on the resolutions of the committee. The question was upon the third resolution, and if any part of it

was to be amended, let the amendment be put in, when the resolution is read.

Mr. APTHORP said it was perfectly in order to move to strike out both and insert a substitute.

The CHAIRMAN wished the committee to determine as to the divisibility of the question.

The committee determined that it was not divisible.

Mr. TILLINGHAST hoped the committee would not preclude themselves from making other alterations in the third article, and from considering the resolutions of the committee, by accepting this amendment.

Mr. HOAR observed that the object of the first resolution for substituting "Christian" for "protestant" in the third article, was obviously to let in the Roman Catholics to all the privileges enjoyed by other denominations. The object of the other was equally plain. It was simply declaring that it is inexpedient to make further alterations in the third article. The gentleman from Dorchester had certainly had an opportunity of considering at large the third resolution, when any of the substitutes had been proposed. The adoption of the second of these resolutions will declare that the provisions in the constitution are to be preferred to those which have been, or might be brought forward. Those gentlemen who have projects for alteration, which they think will be attended with great advantages, and which they think may be adopted by the committee, would of course vote against him. So, as to the proposition of the gentleman from Beverly; if gentlemen think it proper to make one hundred or five hundred societies, they would vote against him. Those who think it expedient to make these innumerable constitutional corporations, in preference to legislative corporations, would vote against him. On the contrary, those who had devoted a great deal of time to the subject, and had made up their minds, that nothing better than the third article can be obtained, would vote for him.

Mr. LINCOLN of Boston said he saw no difference between the effect of this, supposing the law of 1811 to be repealed, and the effect of the proposition of the gentleman from Salem, (Mr. SALTONSTALL.) He thought if this proposition was adopted, we should leave our dearest rights, the rights of conscience, in the power of the Legislature; he hoped this would not be done. The time would come, when this system of the constitution would be repealed. It had been already repealed, in consequence of the liberal act of 1811; but that law might be repealed, though he should consider the repeal as an infringement on the rights and liberties of conscience. What were the liberties of conscience? The liberty to attend public worship where we pleased and pay what teacher we pleased. He did not consider it liberty of conscience to pay as the dissenters do in England. If this proposition was adopted, our property might be taken from us to support a religion which we deemed ruinous to mankind. He hoped before the question was taken, every line of the

third resolution of the committee would be thoroughly considered, in connection with the proposition of the gentleman from Beverly.

Mr. PRESCOTT said they were either to make an unalterable law for posterity, or a law which should be left to posterity to amend. He preferred the last course. He was in favor of the motion of the gentleman from Concord. They had struck out of the constitution a part that was nugatory, and the alteration proposed by the first of these resolutions was a small one; but some gentlemen wanted to strike out the whole of the rest of the third article. There was no end of projects. The question was whether they should provide materially, or whether they should leave the power to the Legislature to make such provisions as circumstances may require. There was no difference of opinion as to the propriety of supporting religion. The only question was, how it should be supported. The constitution provides that the expense of supporting religion shall be paid, and any person has a right to attend on the instructions of any teacher, and may pay his taxes to his use. A further provision has been made by the Legislature, and the law has been determined by the supreme court to be constitutional. These provisions include all cases. People may go from one teacher to another, whether of the same or of a different denomination, and carry their taxes with them. He did not mean to say that this was right, to desert their old minister, who had spent his best days in giving them instruction; he only said they might do it. Further, instead of having a preacher every Sunday, they may have one once a month. What do they want more? The present laws provide for all existing cases, and yet the Convention is called upon to make laws for all posterity. They could not know what inconveniences may arise in future. And, he asked, why was not the Legislature to be trusted? A proposition for the repeal of the law of 1811 must go through both branches—both branches must feel the evil of it before it could be repealed. The Legislature would know better than they could, what inconveniences may arise.

Mr. Low of Beverly said if they did enjoy so much liberty as the gentleman had stated, he was content. But he wished to know why they could not hold this liberty under the constitution, as well as hold other rights under it.

Mr. PRESCOTT replied that they did hold it under the constitution, in the same manner as they did property. In both cases the Legislature had the power of making regulations.

Mr. BLAKE said that from the course which had been pursued, it was probable there was a majority of members in favor of the amendment. He had already given his opinion of having a subject discussed till unanimity was produced. If there should be but a majority of sixty on this question, he should not wonder if the people rejected the proposition with disdain. The select committee were of opinion, that the general principles of the third article ought to be retained. Their object was to reconcile the two great purposes of security of public worship, and liberty of conscience. It was a question, whe-

ther the subject of serving the Almighty God should not have a pre-eminent place in the constitution. While some thought it should not, he uniformly maintained the contrary opinion. He was unwilling to leave anything on the subject of conscience and religious freedom to the Legislature. He was not altogether satisfied with the report of the select committee—evasions might be practised under it; but he did not despair that that enlightened House might add some provisions which would be satisfactory. When the proposition of the gentleman from Pittsfield was before the committee, he did not hesitate to reject it; the object of it was to expunge the third article. Another proposition had been made by the gentleman from Beverly. This was better than the proposition of the gentleman from Pittsfield, but this would weaken and destroy the effects of the third article. He would not give up that article on any account. It would be better for them to have a millstone hung round their necks, and be cast into the deep, than to give up the third article. He did believe that the proposition of the select committee might be modified, so as to give full security for the support of public worship, and for liberty of conscience.

Mr. J. PHILLIPS of Boston said he was in favor of the proposition of the gentleman from Concord. He considered it as in the nature of a motion for an indefinite postponement. He said that for forty years no great evils had existed under the third article, was evident from the little excitement with respect to calling the Convention; and as there was so much discordancy in opinions, it was well to remember the adage, when you know not what to do, take care not to do you know not what. He hoped they should not resemble the man who had the epitaph on his tombstone, "I was well: I would be better, and here I am."

Mr. LEONARD of Sturbridge did not agree that the Constitution was ambiguous, though it may not have carried into effect the intention of its framers. He thought the third article, together with the law of 1811, did not afford a shield for the rights of conscience. He was glad to hear that the time was come for religious freedom. In an election sermon an hundred years ago, to sanction an untruth by toleration, was viewed as an attempt to batter the Almighty from his chair. Toleration had advanced greatly within the last forty years. He asked, what was the difference between a man's supporting any heresy, and supporting the one he does not wish to support. He held it indispensable that the people should be directed in virtue, but the founder of our religion did not command us to give up inalienable rights. He would not say that the language of the third article was Machiavelian, but he would say it was ambiguous, and he wanted it made intelligible.

Mr. HOLMES of Rochester said that before the statute of 1811 the construction of the constitution was such, that no person could draw out of the treasury of any society the taxes paid by a member of another society, unless that society was incorporated. The Quakers, who were a fortieth part of the people of the Common-



wealth, were liable to pay taxes in the Congregational parishes where they resided, and were besides obliged to support their own teachers. It was the same with unincorporated societies of all other denominations. This incapacity of unincorporated societies to claim the taxes paid by their members was removed by the law of 1811. But that law may be repealed. It was said that we were safe in the hands of the Legislature. He considered it a correct maxim that the argument that proves too much proves nothing at all. If the argument was good, no constitution was necessary.

Mr. STOWELL of Peru rose only to reply to a remark of the gentleman last speaking. He said that before the law of 1811, the Quakers and persons of other denominations were liable to be taxed and could not get their money for the support of their own teachers. That was not the operation of the article. He understood that those who provided for the support of public worship in other ways were not taxed at all, and consequently no provision was necessary for drawing money from the town and parish treasuries.

Mr. BALDWIN of Boston was anxious to make a few remarks. He had kept his ears open during the debate and had listened with all the attention in his power. He had heard on one hand many complaints of oppression from the operation of the third article, and on the other side gentlemen had attempted to wink them out of sight, and to represent them as incidental inconveniences to which every institution is liable. He believed that these incidental inconveniences had always been in favor of the predominant sect. He thought it was the opinion of the Convention that provision should be made that every man should have a right to worship where he pleased, and not to pay where he did not worship. But this right was not secured. He had heard the other evening with great pleasure, the eloquent argument of the gentleman from Salem, on the excellence of religion, but he wasted his arrows in the air. Everybody agreed with him in respect to the value and importance of religion. The question was, how religion could be best supported. He alluded to the remarks of his reverend colleague the other day—he had known him thirty years, and had always respected his learning and talents. But he confessed he did not know what denomination he belonged to. He said that he was half a Quaker, but he had not heard him raise his voice against the obligation to bear arms, and he suspected that he had overrated his Quaker sentiments. He, (Mr. B.) was in favor of the resolutions proposed by the gentleman from Beverly. He was willing that parishes should have power to tax all persons within their limits who are not enrolled in any other society; but he could not agree to the resolution to restore the old regulation. He reminded gentlemen of the days of Solomon, a period of unusual prosperity—when his son came to the throne the people came to solicit relief from their burdens. The young king took the advice of the old men, who recommended to him to ease the burdens of his people—but the young men advised him to the contrary. He followed the

injudicious advice of the young men—and what was the result? The ten tribes revolted, and never returned to their allegiance. He referred to the origin of the American revolution for an example of the ill consequences of not listening to the well founded complaints of the people. He referred also to the recent example of Connecticut. Year after year the Episcopalians and other sects came up and said, ease something of our burdens. The request was constantly refused. The result has been such a revolution that all are set at liberty. There are few towns in the Commonwealth in which the new societies formed are equal to the original parish. The regulation therefore does not operate equally. He was willing that all who do not belong to other societies should be taxed in the regular parish. But he wished to be on the same level with his fellow Christians. He said that the law of 1811 furnished a security for all that he wanted, but he knew that attempts had been made to repeal it. He was sensible that it gave general relief. He did not know of any instance of injustice since.

Mr. LINCOLN of Boston begged the indulgence of the committee for a single moment only. He had before stated explicitly that he had no personal interest in the question. He only wished that persons in the country might have the same advantages that he had in town. He had not known personally of many inconveniences. But if gentlemen would appeal to the records of the courts of justice and of the Legislature, it would be found that great inconveniences had arisen. He respected the openness and frankness of the gentleman from Concord who moved the resolutions. He was entitled to much commendation for his frankness. He admitted that the law of 1811 might be repealed, and hoped that it would be repealed, or at least thought that the law was a very bad one. He (Mr. L.) hoped that the inference would not be drawn from anything which he had said that he was unfriendly to the interests of religion. He considered the prosperity of the Commonwealth inseparably connected with it. He was disposed to treat with contempt a parsimonious disposition towards the ministers of the gospel. They were the most important class of men, and those who gave liberal support to them most directly consult their own happiness and that of the community. But he preferred calling on the better feelings of men to resorting to the aid of the law. He was pained to hear the maintenance of religious worship compared with the support of public highways; it encouraged a parsimonious spirit to send a tax bill for the support of highways and one at the same time for the support of religion. A vulgar comparison of this sort tended to prevent men from giving a liberal support to their religious teachers. It had long been his opinion that there had been no great cause of complaint under the law of 1811. He wished it was incorporated in the constitution, that it might be permanent. He proceeded to make some remarks on the proposition of the gentleman from Beverly, and to explain its operation, which he thought would meet the object which the gentleman must have in view of giving

every liberty to a free exercise of conscience, and all necessary support to religious worship.

Mr. Low of Beverly wished gentlemen would remember that Boston was called the cradle of liberty, and he hoped it might still be called so.

Mr. SALTONSTALL said as the gentleman had alluded to the resolutions of the gentleman from Beverly, he could not suffer the question to be taken without a few remarks in reply. The first of those resolutions will go actually to incorporate in six lines all the religious societies in the Commonwealth. It gives them all the power to raise moneys in any way they choose, to support public worship, to erect churches, to support teachers, and for other purposes. Gentlemen do not wish for the aid of law, but in this indirect way they would make all their societies legal corporate towns. The gentleman from Boston had said that the cases of inconvenience complained of were winked out of sight. Ten or fifteen cases had been named for the last forty years; none of them, by the confession of that gentleman, within the last ten years. How were they winked out of sight! They were allowed all their due weight. But they were fewer beyond comparison than might have been expected. They were the grievances that had arisen in the Commonwealth for forty years, while the District of Maine was a part of the Commonwealth, in the operation of this article upon nearly a million of people. Under what part of the constitution had fewer abuses arisen? Elections were required to be holden on the first Monday of April, and all persons with certain qualifications were entitled to vote. But many abuses had proceeded from the exercise of this right—many law suits had arisen. But should we say for that reason that the annual elections should be abolished? It was said that the hard cases were all on one side. He might have related cases known to gentlemen who had taken part in the debate, in which thirty or forty persons had gone off from regular parishes and come back with certificates which cost but twenty-five cents each, which excused them from the payment of their parish taxes. The constitution as it is, secures perfectly the rights of conscience. How is it possible for the Legislature to provide for the support of public worship, and have no power to make laws for carrying the provision into effect.

Mr. WILDE rose (amidst confused and importunate cries for the question) to call the attention of the committee to the precise question. It had not been clearly stated and fully explained. The question was, whether we should substantially incorporate into the constitution the law of 1811. It had been stated by almost every gentleman who had spoken on the subject that it provided amply and fully for all the inconveniences which had arisen under the constitution. The reason why it should stand on the footing of a law, was, that if incorporated into the constitution, so that it could not be altered or modified, it would lead to abuses. What would there be to prevent twenty profligate men with a contempt for re-

ligion, from coming together under the form and name of a religious society for the purpose of evading their obligation to support religious worship? Was it right to restrain the Legislature for all future ages from making such modifications of the law as abuses under it might show to be proper? It was not to be supposed that any alteration would be made, unless on account of abuses that might arise.

Mr. MARTIN rose, and was interrupted for some time by impatient calls for the question. He spoke however for some time against the resolution, but we were not fortunate enough to catch the course of his argument.

Mr. WEBSTER moved that the committee should rise and report progress. The motion was negatived.

Mr. WILLIAMS of Beverly obtained the floor. He presumed he had a right to address the committee on this occasion, and that the right would not be denied him. Before he proceeded on his argument, he gave way to a renewal of the motion by Mr. WEBSTER, that the committee should rise. The motion was agreed to, 196 to 141. The chairman reported progress, and the committee had leave to sit again.

At seven o'clock the Convention adjourned.

#### WEDNESDAY, DECEMBER 27.

The Convention met and attended prayers offered by the Rev. Mr. Palfrey. The journal having been read,

Mr. VARNUM laid on the table a resolution proposing to amend the seventeenth section of the second chapter of the rules and orders of the Convention, by rescinding the words "but a question to strike out and insert, shall be deemed indivisible."

The following gentlemen were appointed on the committee ordered yesterday to draw up an address to the people to accompany the amendments submitted for their adoption or rejection, viz.: Messrs. SULLIVAN of Boston, LYMAN of Northampton, FISHER of Westborough, LAWRENCE of Groton, and BANGS of Worcester.

On motion of Mr. DANA the House resolved itself into a committee of the whole on the unfinished business of yesterday, Mr. VARNUM in the chair.

The resolution proposed yesterday by Mr. HOAR being read,

Mr. WILLIAMS of Beverly said he presumed it would be in order to bring the resolution which he had submitted so far into consideration as to contrast them with the third article, with the report of the select committee, and with the resolutions now under consideration.

Mr. LAWRENCE said that the gentleman seemed to think that the course which had been taken in entering on the consideration of the resolution now before the committee, before that which he had submitted, deprived him and his friends of an advantage in the dis-

cussion which they were entitled to. He therefore, having voted in the majority on the question for taking into consideration the resolution of the gentleman from Concord, moved to reconsider the vote.

Mr. HOAR acceded to the motion. He should be exceedingly unwilling to prevent or impede the full discussion of any project which should have for its object the rendering the operation of the third article less objectionable.

Mr. DWIGHT of Springfield hoped the motion would not prevail. Having gone fully into the discussion, and gentlemen having had an opportunity in a great measure to make up their minds on the question, and being pressed for time, he hoped it would be considered that other gentlemen have rights as well as those who press these amendments.

Mr. FLINT hoped the vote would not be reconsidered, but wished the gentleman from Beverly might be indulged in a comparison of his own motion with that before the committee.

The motion for reconsideration was agreed to, 132 to 91.

The third resolution of the select committee then came again under consideration.

Mr. WILLIAMS observed that the committee had inserted the words "incorporated or unincorporated"; had substituted the word "Christian" for "protestant," and had struck out that part which gave to the Legislature power to enjoin attendance on public worship, and he would now give his reasons in favor of the article, so amended. He agreed with gentlemen who were for retaining the article, in all their zeal for the support of religious worship. He wished, as well as they, to preserve religion for posterity, but he wished to transmit it to them, without shackles, and without unnecessary freedom. He approved of the injunction contained in the article for the support of public worship. He should, it was true, prefer to strike out a few words, but since this was not possible, he was willing to take it as it is, and hoped it would prevail.

The question on the adoption of the third resolution was then taken, and decided in the affirmative—200 to 54.

The fourth resolution was then read.

Mr. WILLIAMS moved to amend by striking out the fourth resolution, and inserting the following :

*Resolved*, That every religious society, incorporated or not incorporated, shall have power to raise moneys for the support of their respective teachers, and incidental expenses, in such manner as they shall determine by the vote of a majority of the legal voters assembled at any meeting, warned and held according to law.

And every person shall have and enjoy the full liberty of uniting with, and paying to the support of, whatever religious society he may choose, within the limits of this Commonwealth, whether incorporated or not. And every person neglecting to unite himself with some religious society for the purposes aforesaid, shall be classed with the parish or precinct in which he may reside, and shall be liable to be taxed by the same.

And every denomination of Christians, demeaning themselves peaceably, and as good subjects of the Commonwealth, shall be equally under the protection of the law; and no subordination of any sect or denomination to another, shall ever be established by law.

Mr. PARKER of Boston rose at the request of the gentleman from Quincy, who was unavoidably absent, to propose that in the third article of the declaration of the bill of rights, the words "all men of all religions, demeaning themselves as good subjects, shall enjoy the equal protection of the laws" should be inserted, instead of the words "men of every denomination of Christians."

Mr. WILLIAMS had no special objection to this proposition, but did not think it would meet the wishes of the people of this Commonwealth.

Mr. PARKER withdrew the proposition.

Mr. WILLIAMS said he wished every guard to be placed around religion which was warranted by its great author. His proposition would obviate many objections that had been felt to the constitution as it stood. He thought the report of the select committee was liable to the same objections as the constitution. His first resolution was to give every society power to raise money. To oblige people to submit to having taxes collected by those of another denomination was putting them in a state of subordination. He thought his proposition would point out a plain path which every one might walk in. It had been said, that the effect of it would be to incorporate at once a great number of societies—he admitted it. But it would not be to all the purposes for which they would be incorporated by an act of the Commonwealth. That incorporated them in detail, and points out particular powers and duties, while his proposal only made them corporations for a particular purpose, that they should raise money for any purpose they might require. This he thought was the spirit of the third article, to secure to the whole community sufficient sums of money for the support of public worship. It had been said that few cases of grievance had been related. This was true—but many might be named; it would take days to relate them, and it would do no good. It had been said that there had been no grievances since the law of 1811—one was mentioned last evening, and a gentleman in the county of Middlesex, only two years since, had been taxed in a town where he did not belong. It is true, to be sure, that after going through two courts he obtained his money back again. Mr. W. said, he did not speak in reference to his own particular denomination, but for others, for posterity—he wished all to stand on precisely the same grounds. He wished people should have the power of going from one society to another of the same denomination. The law made no provision for this, and the privilege could not be obtained but at the expense and trouble of a special law. Beside, the law of 1811 might be repealed, and where shall we stand when it is repealed? He had no favor, no fellowship, or affection for the man who would screen himself from just taxation by joining a society where taxes are not imposed by law. He believed many pay by voluntary subscriptions more than they would if subject to taxation. He thought this proposition was not liable to the equivocation and uncertainty which the article was now liable to. It would put all on the same footing of

equality—it embraced, he thought, the whole spirit of the constitution, the principles for which gentlemen contended. Whether it should prevail or not, he was satisfied with having an opportunity of presenting it and stating his views.

Mr. RANTOUL of Beverly said he had heard principles now advanced by his colleague with which he entirely coincided. He understood him to say that it is the spirit of the constitution that public worship should be supported by a general tax upon the community. If these were the views of the gentlemen who acted with him, he, (Mr. R.) should find no difficulty in agreeing with them.

Mr. WILLIAMS explained.

Mr. RANTOUL was in favor of retaining the resolve of the select committee in preference to the proposition of his colleague. He thought it contained all the principles which he had laid down, and all those which we ought to retain. He thought the effect of that gentleman's proposition was, that all unincorporated societies should be incorporated and obliged to raise moneys for the support of public worship. But he thought these societies could not be obliged to do this without their consent. He thought the details should be left to be arranged by the Legislature; otherwise abuses would be likely to arise.

Mr. PARKER of Boston was happy that they were approximating to the same point in this debate. His sentiments in relation to the third article were well known, but it was, perhaps, not so well known that he was willing to do anything to accommodate it to the views of every class of persons as far as it could be done consistently with preserving the essential principle itself. He considered the views of the Convention as fully expressed in favor of a legal provision for the support of public worship. It was now only necessary to determine in what manner that should be done, consistently with the rights of individuals to worship in the form they please. A difficulty had arisen under the constitution from an ambiguity in the meaning of a religious society. He believed it had been decided formerly that it was not necessary that a society, to be entitled to the rights conferred by the constitution, should be an incorporated society. But in 1810 it was decided by the supreme judicial court that an unincorporated society did not come within the meaning of the constitution to entitle the teacher to demand the money paid by any of its members to the treasurer of the parish in which he resided. It could not be a public society without being incorporated, yet probably the framers of the constitution did not expect that this would be the construction which would be put upon it. He apprehended that this was the ground of nearly all the inconveniences which had arisen. This was the cause of so many petitions to the Legislature, and to this might be attributed the law of 1811. There were many persons who believed that this law was unconstitutional. But the court, on looking into the subject, were unanimously of opinion that the Legislature had the power and might extend the privilege. He therefore considered the law

of 1811 as valid, and that it was an ample remedy. But a further difficulty arose. This is but a law and may be repealed. He was not surprised that gentlemen wished to place the matter upon constitutional ground. There may be a change in public sentiment and the law may be repealed. Two great principles had been established, and were acquiesced in by every part of the house—that the Legislature shall have power to provide for the support of public worship, and that individuals shall be at liberty to worship in the manner they please. The only difficulty was, in carrying these principles into effect. Some who were opposed to the report of the select committee are desirous of incorporating into the constitution the law of 1811. On the other hand it was objected that this law, if made a part of the constitution, would be liable to great abuses. A person having joined any society and obtained the certificate of a committee of such society, would be exempted from taxation in the parish in which he resides. He appealed to gentlemen in favor of this course, if it would not be liable to great abuses. A society of five persons might be formed for the purpose of evading the parish tax. Frauds would be committed which could not be prevented by judicial investigation. Being once in the constitution, whatever might be the abuses, they could not be remedied by the Legislature. The proposition of the gentleman from Beverly, recognized the right of all religious societies to levy taxes for the support of public worship, and made them corporations for certain purposes, and allowed all persons who did not unite themselves to some society, to be taxed in the parish where they resided. This had a great appearance of fairness, but was it of a nature to cure rather than to increase the difficulties? He would say nothing of its incorporating by a single act four or five hundred parishes, but it would hold out a lure to members of parishes formally to join some other society merely to avoid taxation, and without the intention of attending worship, in such society. It allowed any individual to resort to any society through the whole extent of the Commonwealth, and on becoming a member, whether he attends or not, it exempts him from being taxed in the parish where he resides. Mr. P. apprehended that this would be the effect, and that it would set the whole community afloat. With certain modifications to guard against these objections, he should be willing to accede to the proposition. He wished to have it provided that a person to be entitled to exemption in a parish where he resided, should belong to some other religious society in which he usually attends public worship and contributes towards the support thereof. He proposed also one or two other modifications not very material. He alluded to the case of Howe and Adams, where a minister had been employed by a religious society to administer to them only one week in four, in which the court decided that it was a society in the meaning of the law of 1811.

Mr. FLINT of Reading and Mr. RICHARDSON of Hingham, spoke against the resolution.

Mr. WILLIAMS then accepted the modification of the resolution



proposed by him, suggested by Mr. PARKER, in such manner that the second paragraph should read as follows :

And every person shall have and enjoy the full of liberty of uniting with, and paying to the support of whatever religious society he may choose, in which the public worship of God shall be maintained, whether incorporated or not, provided he usually attends public worship therein, and contributes towards the expenses thereof; and every person neglecting to unite himself with some religious society for the purposes aforesaid, shall be liable to be taxed for the support of public worship in the parish or precinct in which he may reside.

Mr. DAWES of Boston rejoiced at the prospect of a reconciliation after so much debate. The constitution was adopted just after he left the law office of one of its principal founders, and he had an opportunity of witnessing the anxiety of those who raised this bulwark of our liberties. He had not forgotten the introductory speech of the gentleman who is now the oldest member of this Convention. That speech was intended to reconcile the discordant sentiments which prevailed in gentlemen from different parts of the Commonwealth and of different means of information. Of the spirit of amity which prevailed in the Convention of 1780 he could speak with more confidence. He was one of the twelve gentlemen chosen from this town to that convention, nine of whom have gone to render their account, and he must soon follow. Those gentlemen were obliged to change their minds as light beamed upon them on the various subjects discussed. Even Samuel Adams, who was remarkable for the inflexibility of his opinions, after hearing Fisher Ames' speech upon the biennial election of members of Congress, got up, not to oppose as we expected, but to tell us that he was satisfied with the reasons which had been given, and that he accorded entirely with Mr. Ames. This conduct in such a man as Mr. Adams had a great effect upon the other members of the Convention. He (Mr. D.) had not got rid of his attachment to the third article. He did not like the part which had been expunged, but the rest he did like. He could not understand the motive of gentlemen of different sects who never united before, in uniting now against this article. This induced him to think that there was something in the article which they could not get over. He could not find it, but he was willing to yield to the opinions of others. He came to sacrifice his prejudices and he would agree to adopt the proposition as modified by the chief justice.

Mr. BLAKE of Boston said that having had the honor of being one of the select committee to whom had been referred the very interesting subject, of which a portion was then under discussion; and especially in the absence of the honorable chairman of that committee, whose head and whose heart, he knew, were full of solicitude on that subject, he felt it to be not less his duty than his privilege, notwithstanding the then protracted state of the discussion, to submit some observations, in addition to those which had been made by him on a former occasion, relative to the merits of the question then and now before the committee. This sense of duty

was the more imperative upon him, on account of the very unexpected manner in which it had been the pleasure of this committee, (owing, without doubt, to a supposed necessity of an inflexible adherence to strict parliamentary rules, through the whole course of their proceedings) to receive and to treat the *unfortunate report* of the select committee on the subject of the provisions contained in the third article of the constitution. That report, said Mr. B., had been literally so overlaid and smothered by the numerous and various propositions of *amendments* and *substitutes* that had been heaped upon it, that its merits or demerits, whatever they might be in reality, were now either entirely forgotten, or so completely overlooked, as scarcely to have been adverted to, even in the way of argument, during the long and tedious debate that had ensued, since the day of its presentment to the Convention.

Gentlemen might, nevertheless, be assured, said Mr. B., that the report of the select committee, especially that part of it which has reference to the important subject embraced by the third article of the declaration of rights, was by no means a sudden, inconsiderate expression of opinion. On the contrary, it was the result of the most anxious reflection and deliberation on the part of every member of that committee, who, as he humbly hoped, were not entirely destitute of some portion of that forecast and intelligence for which the generality of the members of this honorable body were so preeminently distinguished.

The truth is, said Mr. B., that the attention of the committee was devoted, for several successive days and nights, and even weeks, to the consideration of the important matters referred to in the third article of the constitution; and he would venture to assert, that scarcely a proposition had been introduced, or an argument urged, either before the Convention, or the committee of the whole, in relation to the principal subject, which had not been previously introduced, and deliberately weighed and considered by the select committee. Some of its members had strenuously contended in favor of preserving entire all the essential provisions of this article, without any essential change or amendment; others were in favor of expunging the whole; and others were the advocates of such modifications and amendments, as, in the opinion of a majority of the committee, would have so impaired and frittered away the essential principles recognized in the article, as to have rendered the whole entirely inoperative. There was, said Mr. B., an inherent, intrinsic difficulty in the whole subject. On the one hand, the object was to retain in the constitution everything that might be requisite to ensure protection and support to religious institutions, which were deemed to be so essential (in the language of the constitution) to the "happiness of a people, and to the good order and preservation of civil government;" and on the other hand, to abstain from any regulation in regard to this object, which could, by possibility, be considered an infringement upon the *rights of conscience*, or upon that free and unrestrained privilege of opinion and

action on religious subjects, which, of all other things, seemed to have been considered most sacred by the enlightened men who were the framers of the constitution.

These views, which at the first presentment of the subject would seem to be opposite and repugnant, it was nevertheless the desire of the select committee, if possible, to reconcile; and for the accomplishment of this object, they had even flattered themselves, that the mode contemplated in their report was open to as little exception or rejection as any which probably could be devised. Mr. B. said that the diversity of sentiment which had been manifested in the course of debate on this subject, before the committee of the whole, had, more and more, confirmed the impressions which were on his mind, as to the correctness of the views of the special committee respecting it; and that no proposition had yet been submitted, which, in his opinion, would be likely to place the subject on a more eligible footing, with a view to the preservation of the essential principle, and the reconciliation of all contrariant interests and opinions, than that suggested by the report of the select committee.

With regard to the specific proposition which had been submitted by the reverend member from Beverly, and which was then under discussion, Mr. B. said that, viewed either by itself and alone, or in connection with the proposed amendment that had been attached to it on motion of his honorable colleague, the chief justice, it was, at any rate, no novelty in the view of any member of the special committee. A similar proposition, and one stated in almost the same terms, had, some weeks since, been submitted to the select committee by one of its members; and, after the most deliberate consideration, was rejected, as having a tendency, in an indirect manner, entirely to frustrate the great fundamental principles recognized in the article in question. In the view of the select committee, the objection to the principle alluded to was, that the words "*religious society*," as therein employed, seemed to be susceptible of no fixed and certain definition, which was a property, of all others, most desirable in a constitutional provision; that it might very fairly be contended, according to the popular sense, that wherever "*two or three were gathered together*," they should be deemed to constitute such a society, for religious purposes, as would be sufficient to afford a place of refuge for the capricious malcontents of any established parish; and thus to open wide the door for evasion of all the regular taxes, intended by the constitution to be provided for the support of public worship. That, according to the import of this proposition, everything in the cases therein supposed would be left in the custody of the judicial tribunals; to all the doubts and uncertainties necessarily incident to the ordinary course of trial by jury; and, in fine, that a principle, a leading and most important one, which was manifestly intended by the constitution to be fixed and determinate, and upon the preservation of which, "the happiness of the people and the good order and peace of civil government" are supposed to be so essentially dependent, would be left

in the midst of doubts and uncertainty. On this ground it was, said Mr. B., that the proposition alluded to was considered, by a large majority of the special committee, as entirely inadmissible, without assenting, at the same time, to the virtual abandonment of the great principle so explicitly recognized in the article of the constitution which has been mentioned. Such, said Mr. B., were the views of the select committee on this point; such were the views he had himself taken of the subject; and he had no hesitance in stating that they had not been changed in the slightest degree, by any arguments he had heard, on the other side, in the course of the debate. It had been, said Mr. B., the particular concern of the special committee, to relieve the subject, as far as practicable, from the embarrassment which has been mentioned; and they had humbly hoped that the arrangements proposed in the fourth article of their report, might, with such modifications as would probably be suggested by this enlightened assembly, have been deemed sufficient for the purpose—whether they were too sanguine or not, in the indulgence of this expectation, remains yet to be determined, after that part of the report which has been alluded to, shall have been deliberately discussed and considered.

It was not, however, said Mr. B., with a view of entering into a minute examination of the details of the precise propositions now before this committee, or of its relations and bearings upon the principal question, that he had risen upon the present occasion. His purpose was, as he believed, of a higher, and in his view, of a much more important nature. He was aware, indeed, that after the long and elaborate discussions which had taken place before this committee, for several days past, the patience of members must have been exhausted, and their opinions probably have been made up and settled with regard to everything connected with the third article of the declaration of rights. From the course of the debate, and from the votes which had been passed in committee on that subject, there seemed to be but little doubt as to what would be their decision of the question now before them. Still, however, as the final decision upon this, and upon all other questions connected with the subject of amending the constitution, was to be pronounced by the sovereign people; and as the members of this Convention would carry with them among their constituents, the sentiments and feelings which had been formed here as to the several subjects which had been under discussion, it could never be too late for any member of this body to offer suggestions which might have a tendency to allay asperities, and to correct any improper prejudices and impressions which were so likely to have been produced by the very *extraordinary arguments*, in relation to the whole subject of the third article of the declaration of rights, that were urged and reiterated by several reverend gentlemen, and other members of this committee, at the commencement of this debate; arguments which had, indeed, subsequently been made to yield to the superior force of reason and truth, but whose pernicious effect upon the minds of members,

might not yet, perhaps, have been entirely counteracted. It had, said Mr. B., been advanced before this committee, by high and reverend authority, and the position had been defended for several successive days, with a degree of confidence and even zeal, which would denote conviction of its truth, that the provisions of the *third article*, in so far as they go to *enjoin* upon the citizen any pecuniary contribution towards the support of *public teaching* of piety, religion, and morality, were to be regarded as nothing more nor less than a rule founded upon *tyranny and usurpation*; that it was a gross and palpable invasion of inalienable rights, and a violation of that most sacred of *all rights*, the *right of conscience*! This, said Mr. B., is a pretty high and grievous imputation upon the character of our present frame of government, as well as upon the character of those who were immediately concerned in its formation, and it ought not therefore to be passed over without the most serious and deliberate consideration. If there be anything in the constitution of Massachusetts which wears the semblance of tyranny and oppression, he would beg leave to inquire, in the first place, who were the tyrants and oppressors? Who else indeed, said Mr. B., than that assemblage of most enlightened and illustrious patriots who were the framers of the instrument, and the majority of that high minded and patriotic people of this Commonwealth who had seen fit to sanction and adopt it. Sir, said Mr. B., I hold it to be the solemn duty of this Convention, and of every individual member belonging to it, to vindicate the character of their predecessors, the Convention of 1780, from so foul and unfounded an aspersion. I hold it to be the solemn duty of the people, and of ourselves who are the immediate representatives of the people of the present day, to defend the character of those who have preceded us, from the reproach, the foul, indelible reproach, of having, under any imaginable circumstances, sanctioned a system of government, under which the sacred rights of conscience could be holden in bondage, or which should admit of any possible construction whereby the inalienable rights of the citizen might be infringed with impunity. For ourselves also, said Mr. B., we have something to do in the way of vindication. As one of the people, he could not, himself, quietly submit to the imputation that, for more than forty years past there had been lurking at the very foundation of our social compact, a *principle of injustice*, of *gross inequality* as to the rights of the citizen; of *oppression*, and of *tyranny*; and yet, that for a series of years we should have been so stupid as not to have discovered its existence, or so tame and so base, as not to have uttered a single murmur or complaint respecting it. For the special committee, even, who had been particularly charged with the examination of this subject, and who, for many successive days had devoted the most earnest and anxious attention to its merits, he would humbly hope, also, that there might be found something like an apology for that dullness and misapprehension on their part, which are implied by the arguments of gentlemen on the other side; and that this honorable body

may be disposed, so far, at least, to countenance the proceedings of that committee, as to admit, that if there be in that part of the constitution which was submitted to their scrutiny, *any principle of injustice* like that which has been the theme of so much complaint and remonstrance, it is, at least, not quite so plain and glaring as had been pretended; and that if it exist at all, it was so recondite, so deeply seated in the constitution, as that it might very naturally elude the notice of common and ordinary minds.

But, said Mr. B., if there be any provision in the third article of the declaration of rights, which savors, as has been asserted, of *bigotry* and *usurpation*, he would beg leave again to inquire who were the bigots, who the usurpers? Who are the men to be denounced as having been the file leaders in a foul conspiracy against the inalienable rights of the people, the sacred rights of conscience? They were indeed no other than *Samuel Adams, John Adams*, that enlightened and venerable patriot, who for many days since the assemblage of this Convention, was in the midst of us, mingling in our debates, and scattering profusely before us the fruits of his great wisdom and experience. It was, said Mr. B., a well known fact, that the former of these most distinguished men was the chairman of the committee, who were appointed in behalf of the convention who formed the constitution of 1780, to draw up an address to their constituents, for the purpose of stating and explaining the views and principles of that system of government which was then about being submitted to the consideration of the people. It had been stated to him, said Mr. B., and upon such authority as seemed to admit of no doubt of the fact, that the address in question was actually drawn up by the pen of the venerable and most highly distinguished individual last referred to; and as the sentiments of such a man on such a subject, or indeed on any subject connected with the rights of man and the principles of civil liberty, ought perhaps to be received as having almost *the force of binding authority*, he presumed he should be indulged by the committee in calling their attention to some portion of that celebrated address. Here Mr. B. read from a pamphlet several passages of the address, noticing more particularly the following, as having an immediate reference to that article in the declaration of rights, which was then under discussion before the committee: "This article, says the address, underwent long debate, and took time in proportion to its importance; and we feel ourselves peculiarly happy in being able to inform you, that though the debates were managed by persons of *various denominations*, it was finally agreed upon with more unanimity than usually takes place in disquisitions of this nature; we wish you to consider the subject with candor and attention. Surely it would be an affront to the people of Massachusetts Bay, to labor to convince them that the honor and happiness of a people depend upon morality; and that the public worship of God has a tendency to inculcate the principles thereof, as well as to preserve a people from forsaking civilization, and falling into a state of savage barbarity." Such, said Mr. B.,

were the sentiments of this most illustrious man, in relation to the principal subject referred to in that article of our constitution, which in this assembly, (but on no other occasion, as we have ever heard,) has been the subject of so much complaint and reprehension. Such were the sentiments of a man, whose *piety* and *patriotism* were coeval and coequal, and constituted the very essence of his character ; who in regard to everything connected with the rights of man, and the liberties of his country, was the very creature of jealousy ; the child and champion of his country's cause. The man indeed who, like the dragon of the Hesperides, stood by the trunk of the tree of liberty, and with a never wearied, never sleeping vigilance, guarded its precious fruits against every intruder. It was to be remembered moreover, said Mr. B., that the sentiments alluded to, were not those of an individual merely, but the result of the combined wisdom and intelligence of that illustrious assemblage of statesmen and patriots who were concerned in the formation of our constitution ; and still more especially, that this same constitution, at a period too when the flame of civil liberty was burning in all its primitive brightness and purity ; when the people of Massachusetts were united as a band of brothers in defence of *their natural and inalienable rights* ; was sanctioned and adopted by the community with a degree of unanimity which denoted beyond all possible doubt, the general acquiescence in all the principles which it contained. Who then, said Mr. B., shall have the confidence, he would not say *temerity*, to assert at this day, and upon the authority of *such arguments*, if so they might be termed, as had been adduced in support of the position, that the provisions of the third article, or any other provision in the instrument, had been founded in bigotry and superstition, or could be deemed an infringement of the *rights of conscience*, or of any other fundamental principle of civil liberty ? The ~~supposition~~ <sup>position</sup> was monstrous, and carried with it such an imputation upon the character and intelligence of our revolutionary patriots as could not for a single moment be endured ! It had nevertheless been distinctly asserted, in the course of the debate upon the provisions of this article in the constitution, that they were an invasion upon the inalienable rights of the citizen, and consequently that it did not belong even to a *majority of the people*, to establish any such regulation. Upon this point, said Mr. B., he had been completely anticipated by the arguments of gentlemen who had preceded him. He would however in general terms, take the liberty to remark that not only the honorable member from Pittsfield, but all others who had assisted in the enforcement of his propositions, had by their concessions completely abandoned the ground which they had originally assumed in the argument. They had all distinctly admitted the soundness of the two first propositions which are laid down, so clearly, in the article alluded to ; and indeed their several proposals of amendment had in every instance been prefaced by a recital *in totidem verbis*, of the very terms in which those propositions are stated in the article in question. It resulted then of course,

as the only point to be settled, what are the rights of the majority of a people, in regard to a rule which is *essentially necessary to their happiness*, and to the good order and preservation of that civil government which was the first and only object of the social compact. On this head it ought to be the subject of inquiry, said Mr. B., what are not, rather than what are the rights of a majority of the sovereign people. Allowing to the whole people but the mere right of self preservation, which belongs to the meanest individual in society, and is superior to all laws and all restraints, and it would follow, of course, that in regard to whatever might be "essential to the *happiness of the people*, and to the preservation of their government," they had the right to do anything and everything but the right to do wrong. It is nevertheless admitted that even a majority of the people, in the very plenitude of their sovereignty, have not the right to establish a rule of government which shall interfere with the rights of conscience, or any other right which can properly be classed among the inalienable rights of the citizen ; and it therefore remained to be considered only, whether there be anything, in the article alluded to, that could fairly be construed an infringement of these rights. Upon this point also, said Mr. B., the arguments of gentlemen who had preceded him, were a complete anticipation of everything he could have suggested. It had been shown, beyond the power of contradiction, that christianity was not merely that concern between the creature and the Creator, which would be likely to be injured by every possible interference of the civil authority, even in the way of encouragement and protection ; that it was a social principle, on the encouragement and protection and preservation of which the *happiness of a people*, and all their nearest and dearest interests and concerns in society, were most essentially dependent. It had already, said Mr. B., been most forcibly illustrated before this committee, and he would not attempt to 'give any additional weight to the sentiment, that this religion which we profess was not that mere solitary, individual concern that had been represented. On the other hand, that it had been bestowed by its great Author on man not only as an individual, but as a member of civil society ; that love of neighbor, and charity, and good works among men, and indeed the whole code of moral and social duties, were plainly inculcated by its precepts. If then, said Mr. B., the principles of this holy religion we profess, be so intimately connected with the best interests and welfare of civil society, how shall it be denied that it is not only the privilege, but the duty of that society, by all reasonable and lawful means, to cherish and protect them? But, said Mr. B., another objection had been stated, and urged with peculiar emphasis before the committee, against the provision of the constitution requiring contribution of the citizen for the maintenance of institutions for the public worship of God ! It had been contended, and for several successive days the committee had been entertained and edified also, as he hoped, by a series of sublime discourses which had been poured down upon them by reverend



gentlemen and others from various quarters of the house, who had risen in support of the position, that the constitutional provision which had been referred to, was nothing less than a *gross and palpable* infringement of the sacred rights of conscience. Upon this topic, the arguments of gentlemen had been replete with unusual warmth and animation; and ministers of the gospel, and magistrates and people, had been invoked, by the most solemn and pathetic appeals, to bear witness that the constitution of Massachusetts—that same constitution to which we had been so much attached, and under whose benign influence and protection, for more than forty long years, every order and description of the citizens seemed to have been so contented and happy—had, nevertheless, perpetually carried in its bosom a principle of insupportable tyranny and oppression! The position, said Mr. B., was a pretty bold one, and was deserving most certainly of the very serious consideration of this committee. On such a subject, he regretted extremely that the remarks of some gentlemen in the course of the debate had seemed to have been addressed rather to the feelings and imagination of this committee than to their reason and understanding. On a subject of so much importance and solemnity, it was certainly desirable that reverend gentlemen should have been somewhat exact in their definitions and reasonings. On no subject, so much as on that which relates to the rights of conscience, was the mind or imagination of man so apt to indulge in vain and extravagant speculations. The truth of this remark had been most strikingly exemplified in the course of this debate. Reverend gentlemen, in their *discourses* and appeals, had, indeed, soared to the topmost height of the subject, but had disdained to look at the real principle which lies at the bottom. What then, he would inquire, were the real meaning and signification of that principle which had been so earnestly contended for under the name of “right of conscience” in regard to matters of religion? If, by it, were intended that right only whereby every citizen of the Commonwealth should be left to the free and unlimited enjoyment of his opinions and will, in relation to everything immediately connected with his religion; or if, to adopt the language which was used in another article of the constitution no more was intended by gentlemen than that “*no subject of the Commonwealth should be molested or restrained, in his person, liberty, or estate, from worshipping God in the manner and season most agreeable to the dictates of his own conscience*,” if so much, and nothing more were intended by the arguments of gentlemen, then, said Mr. B., he was quite sure there was not a member of that committee, not an individual in the Commonwealth, who could be disposed to question the soundness of the principle, or, in any manner or degree, to disturb its operation. The “right of conscience,” as thus defined, was plain and intelligible; it was distinctly recognized and established, in more than one article of the constitution; and of all other rights belonging to the citizen, it was deemed by the framers of that instrument to be the most sacred and inviolable. This was also,

without doubt, said Mr. B., to be reckoned among the inalienable rights of the citizen, and it followed therefore, as a conclusion, that neither the government of Massachusetts, nor a majority of the people sovereign as they are, are permitted on any legitimate ground of principle or reason to interfere with its exercise. But, said Mr. B., while no man in the community could be more disposed than he was, not only as regards religion but as relates to every other concern of life, to hold sacred and inviolate the claims of *conscience*, yet he was not inclined for one, to pay great deference to the pretensions of that specious and notional thing, which occasionally had assumed that name. While on the one hand, he would be among the last to advocate any provision in the constitution which should disturb in the slightest degree the *real right* of *conscience*, yet on the other hand he would not be deterred from the adoption of a sound and salutary principle, by yielding too readily to its freaks and caprices, its pleas and its pretexts. He well knew, said Mr. B., that when the reverend and pious and highly respectable members of this assembly had been speaking of conscientious scruples in relation to the subject under discussion, they meant not to be more indulgent than he was to mere affectation and pretence. But it should be remembered, said Mr. B., that neither the constitution nor the laws were made for the government of the pious and the virtuous part of the community; or in other words, of such men as are the reverend members of this Convention. It was for the restraint of the profligate and licentious; for the control of the unprincipled and lawless, that both the constitution and the law were alone intended. What then, said Mr. B., might not be the mischief, if the whole subject of our religious institutions; those institutions which were pronounced by the constitution, and even admitted in the arguments of gentlemen, to be so essential to the happiness of the people, and the preservation of peace and good order in civil government, should be left to the voluntary disposition of every man in the community who might choose to resort to the subterfuge of a conscientious scruple. Sir, said Mr. B., there is no end to scruples or pretended scruples of this kind; there is scarcely a man in the community, whatever may be his character or his conduct among his fellow men, who does not believe or at least imagine, that in every concern of his life he has been regulated by the dictates of a "*good conscience*."

"We trust we have a *good conscience*" is a sentiment almost universal.

One shall grind the face of the poor, shall have wrung the scanty pittance from the helpless widow and the orphan, yet what he exacted was his due, and as he pays his own debts, so, *in good conscience*, he has the right to require of others the payment of theirs.

Even the remorseless Jew, prepared with his knife and his scales to carve the pound of flesh from the bosom of his debtor, did but exact the due and legal forfeit of his bond; he moreover fulfilled his bargains upon the Rialto; and we *are not told* that he

was deterred by any qualm of conscience from proceeding to the execution of the bloody business he had in view. Sir, said Mr. B., ~~this plea of conscience often stands in the way of legislative proceeding~~; it had more than once stood in our own way, since the first assemblage of this Convention, in relation to several important subjects that have been passing in discussion before us. In relation to the proposed organization and discipline of the militia, it had been seen that whole classes of individuals had claimed to be exempt from the operation of the general principle, because, in "good conscience," they could not endure the idea of wars and battles, or submit to all the horrors of bearing arms! So as to the concerns of the judicial department. The very streams of justice must be impeded, and its fountains broken up, by reason of *conscientious* scruples on the subject of oaths. Many other instances, by way of example, might be enumerated, for the purpose of showing the incalculable mischief and inconvenience which must attend the management of the various concerns of society, were we to attach great importance to objections of this kind. But, said Mr. B., there was, without doubt, a genuine, admitted *right of conscience*, which was holden sacred by the constitution, and which most assuredly ought not to be, and he trusted never would be, violated with impunity, either by the people or their representatives. He had already, in a former part of his remarks, attempted to give something like an explanation of the nature of this right; and he would here take occasion to repeat, that, according to his apprehension, it was not to the subject of this right, but to a very different subject and object, to which the arguments of gentlemen on the other side were alone applicable. His reverend colleague from Boston, with a frankness and candor that were the peculiar and well known characteristics of his disposition on all subjects, had, in the course of his arguments, been pleased to admit, that every religious institution in the Commonwealth, of whatever sect or denomination, had been productive, in his opinion, and would continue to be so, of beneficial effects upon the morals and good order of society. Other reverend gentlemen had seen fit also to express, in the course of debate, a similar sentiment. In this concession, then, said Mr. B., he found quite enough, if there were nothing else favorable in the case, for the support of the principle for which he had contended. Upon this ground the question had ceased to be a matter of conscience, and had become a mere question of taxation, of money, and nothing besides. If the Baptists, the Methodists, the Episcopalians, and all other teachers of any and every denomination of Christians, were in reality, as had been conceded, doing good to the cause of civil society by their instructions, how could it be said by any man, with reason, that he could not conscientiously administer to the support of such teachers, although their particular tenets as Christians happened not to be precisely in unison with his own? He insisted, therefore, again and again, that the objection was founded not on any scruple of conscience, but was referable only to

a question of expense. Yet it had appeared from the course of the debate that there must be something absolutely shocking to the feelings of a conscientious Christian, that he should be required to contribute, however indirectly, and however necessary might be the requisition for the great purposes of civil government, to the support of any religious teacher, whatever might be his purity and piety, but whose particular tenets were not precisely conformable with his own; and gentlemen have even spoken of a tax in such case with an expression of abhorrence, as though it were to be appropriated to the promotion of Pagan idolatry, or of the horrible rites and abominations of the temple of Juggernaut. As relates to the true principle for which he contended, and in further explanation of the interest of civil government in the question, as well as its right to interfere to the extent contemplated in the third article of the constitution, he begged leave, said Mr. B., to state one or two examples in the way of illustration. Suppose, said Mr. B., a majority of the people of the United States were to decide that it would advance the dignity and glory of the nation,—that it would be promotive of its honor and happiness, to establish, at the public expense, a missionary society, having for its object to diffuse far and wide the principles of christianity, not only through the country but through the world. He would ask if the minority in such case, being members as they were of a Christian community, could complain of injustice? much less could they feel their consciences afflicted when *required* to contribute for the accomplishment of so grand, so noble an undertaking? They might indeed disapprove the project; it might appear to them as being wild and visionary; but of all this the majority, and not they, are the legitimate arbiters. The question returns, is there anything in the case, at which *the conscience* of the most scrupulous individual would revolt, who, at the same time, should profess to be unconcerned *for his money*? Suppose again, it should be the pleasure of a majority of the nation to erect, near the centre of the Union, some grand edifice, in faint imitation of the renowned temple of the great and wise man of antiquity; suppose it were dedicated to the service of christianity, and the people were invited, *but not compelled*, annually to assemble thereat, and to unite in one great act of devotion and praise to the King of kings and Lord of lords? Suppose the "*happiness of the people*," "*the preservation of civil government*," were deemed by the majority to be essentially dependent on the good effects of such an institution; was there anything in the project, said Mr. B., unusual and extraordinary as it might be esteemed, that was calculated to affright the conscience of the citizen; or to excite in his mind any other scruple or misgiving than such as might arise from the objection of becoming tributary, against his will and his wishes, to the furtherance of so extravagant, so fantastic an undertaking. It was not, then, said Mr. B., an affair of conscience, but, in truth, an aversion to *taxes*, that had been made the foundation of the argument throughout the debate, against the

existing provisions of our admirable constitution, which relate to the subject of our institutions for public worship ; and, said Mr. B., it was worthy of all notice, that, among all the grievances that had been stated from different quarters of the house, and notwithstanding the vast variety of detail with which the committee had been favored, respecting warrants, and lawsuits, of parish rates and assessments, not a single individual had been heard to complain of any *mental agony*, or any wound that had been inflicted on his conscience. He was willing, said Mr. B., to admit, and he cheerfully did so, that particular inconveniences and inequalities had occasionally been experienced under the operation of the constitutional provision, and that some such might very probably be attendant, also, upon the arrangement which had been proposed by the select committee. It was most certain, however, that if the combined intelligence and wisdom of the universe were concentrated, and engaged in deliberating upon this subject, it would be impossible that any general rule should be established that would be exempt from similar exception. The laws of society, like the laws of nature, were steady and uniform in their operation, and could not bend to particular cases. We behold the summer's cloud ; it is driven on its course by the impulse of a fixed, undeviating, unchangable principle, and stops not in its career to select the places whereon to pour its waters ; the lightnings also descend ; the substance of one man is blasted and another saved. Yet who was there so foolish as to complain of inequalities in the operation of this grand phenomenon in nature, or to say he desires not the refreshing and fertilizing showers of heaven ? Of a similar character, said Mr. B., it had appeared to his mind—and he had devoted much attention to the subject—were the inconveniences and inequalities which had been so feelingly and forcibly stated in argument by some of the members of this committee. In his view, they were the natural and necessary effect of the generality of the provision, rather than the fault of the provision itself. But whatever they might be, or to whatever cause attributable, they had seemed to him, when put in comparison with the great public benefits which had been, and would continue to be derived from the preservation of the *grand principle* recognized in the third article of the declaration of rights, as but a grain of sand on the desert of Arabia, or but a single drop to all the waters of ocean.

Mr. B. added by stating that it had been the anxious desire of the special committee to obviate, as far as possible, all the inconveniences which had been experienced under the operation of the constitutional provision as it stands ; and he yet entertained the hope, that the plan proposed by the report of that committee, with some few modifications that might be suggested, would be acceptable to all.

Mr. B. remarked, in conclusion, that it had been his intention to take no other part in the discussion than as a mere layman ; that he professed not to have been actuated by any extraordinary zeal

or solicitude on the occasion, but had looked at a principle in the constitution with reference only to its influence and operation upon the best interest of society, and pretended to feel no other concern for its preservation, than such as was common to any other individual in the community.

Mr. WEBSTER said his principal object in rising, was to ask the gentleman who proposed the modification of the amendment, whether the amendment would not allow any three men to form a society and contribute a shilling apiece and hear a sermon once in two years, and be excused from any further attention to public worship. This consequence seemed to him to follow inevitably. Mr. W. said that as he was up, he would take occasion to discharge all his duty in relation to the present subject. This committee, a numerous body, had repeatedly decided on the leading principles, that it was in the power of the government, and it was its duty, to provide for the support of public worship. If they went into detail, they would never come to an end. Their object should be to fix only general rules, and leave the application to be made by the Legislature. It was perfectly well observed by the gentleman from Reading, the more they inserted in the constitution which the Legislature could not modify, the greater was the opening for abuse. Gentlemen were mistaken if they thought that the longer they made the provisions of the constitution, the more clear they should make them. Litigation was never avoided by having long statutes. The Legislature ought to have the power of making the particular provisions on this subject as on others. Where is the definition of murder left? The Legislature may say that slaying without malice shall be murder. They may say that stealing a shilling shall be capital. Yet the constitution does not go into details on these subjects. The committee had listened to cases of particular hardships. This was a necessary consequence of all general rules. The sects in this country seemed to require more guards against the oppression of each other, than they would in Turkey against the oppression of the Grand Seignior. He entreated gentlemen to consider that if their debates were to go abroad literally reported, the impression would be that religious liberty did not exist among us. The French had a maxim in eloquence that nothing was beautiful which was not true. He wished gentlemen would pay regard to this maxim in their speeches. The committee had agreed to strike out of the constitution that part which respects enjoining attendance on public worship. He agreed with them. That was the only part which seemed to affect liberty of conscience. Gentlemen had talked of paying for doctrines abhorrent to their feelings—he knew of none such. The effect of every sect was good, when we look to the interest of society. He might dissent from one on account of its excessive fanaticism, and from another on account of its excessive liberality; but no man would say they were not beneficial to society. How then could they object to taxes for the support of them on the ground of conscience? It was proper to put

guards on the power of taxing for this purpose ; but there was no right of conscience in this case ; it was a right of property. When gentlemen should put it on this ground, he should agree with them, and then the question will amount to nothing more than this ;—what power or what duties shall be put upon the Legislature ? The committee had agreed to strike out the clause for enjoining attendance on public worship. What remained to be done ? It had been frequently said that if the law of 1811 should continue in force nothing more would be wanted. That law was a declaratory law ; it had been acted upon ; it stood on the ground of other laws, which had been found satisfactory. There was no reason to suppose the Legislature would repeal this law, any more than the law respecting primogeniture or estates tail. One part of the law of 1811 put unincorporated societies on a footing with incorporated societies ; another part related to the disputed point, whether a man could go from one society to another of the same denomination. The learned gentleman from Newburyport said yesterday, that one might by this law ; and other gentlemen of great weight, among them the chairman of the select committee, (Mr. Bliss) had said that the true construction of the constitution itself allowed the same thing. The third resolution of the select committee, which had just been adopted, recognized the principle that unincorporated societies were such as should discharge a person from his former society—a branch of the law of 1811. Was not this enough ? and better than going into a great deal of detail ? The word “protestant” had given place to the word “Christian,” and the clause for enjoining attendance on public worship was struck out. What more was required ? Nothing but to make certain the right of going from one society to another of the same denomination. He was willing to do this ; and if he might, as he believed he might, he would move to amend the amendment of the gentleman from Beverly, as modified at the suggestion of his colleague, (Mr. PARKER) by striking out all after the word “resolved” and inserting the following, viz.:

“That it is not expedient to make any further alteration in the third article of the declaration of rights, except to provide, that all moneys paid by the subject for the support of public worship and of the public teachers of piety, religion and morality, if he shall request it, be applied to the public teacher or teachers, if any, on whose instruction he attends, whether of the same, or of a different sect or denomination from that in which the money is raised.”

It would recognize the two great principles of the law of 1811, relating to unincorporated societies, and to going from one society to another of the same denomination. His apology for making this proposition was, that the subject was so fertile in projects, it was necessary to take the sense of the committee negatively.

The CHAIRMAN said the proposition could not be received, because, if adopted, it would exclude from consideration other propositions before the committee.

Mr. WEBSTER said he was surprised at this decision. On this

principle no matter could be decided, unless every other matter which was contradictory was first discussed. Giving the negative to a proposition was discussion enough.

After Messrs. DANA, QUINCY and WHITTEMORE had made a few remarks on the point of order, Mr. WEBSTER appealed from the decision of the chair, and gave his reasons. A resolution reported by the select committee is under consideration. An amendment is proposed. He moves to amend the amendment. Amendments could be built two stories high, as the chairman had correctly expressed it, and no higher. He amended by agreeing with the gentleman from Beverly to strike out, and differed from him as to the matter to be inserted.

The question on the appeal was taken and decided against the chair, 109 to 209.

Mr. NICHOLS, Mr. WILLIAMS of Beverly, Mr. Low of Beverly, Mr. LINCOLN of Boston, Mr. STONE of Stow and Boxborough, and Mr. LINCOLN of Worcester spoke against the resolution.

Mr. WEBSTER replied to the remarks of the gentlemen who opposed the resolution.

The question on accepting the proposition offered by Mr. WEBSTER was then taken, and the votes were 196 to 195. And the chairman voting with the minority, there was an equal division and the question was lost.

The committee then rose, reported progress, and had leave to sit again.

Leave of absence was granted to Messrs. HOSFORD of Williams-town, SMITH of Sunderland, and BARNARD, MITCHELL, FOLGER, BURNELL, and WILLIAM MITCHELL of Nantucket. The last five named gentlemen were excused on the ground that the harbor of Nantucket would probably be frozen up so as to prevent their return to their homes this winter, if they are longer detained.

Mr. HUSSEY of Nantucket urged at some length the reasons for granting leave to these gentlemen. Adjourned to half past 3 in the afternoon.

#### AFTERNOON SESSION.

The Convention met according to adjournment.

Mr. WEBSTER said that in committee of the whole in the forenoon, a vote was taken, the effect of which, if passed in the affirmative, would have been to terminate the debate on the subject before the committee. It was passed in the negative by the casting vote of the chairman of the committee, very properly given. No gentleman could suppose that any alteration of the constitution could be carried into effect which was passed by a single vote or half a vote of that body. He had ascertained that it was not generally understood that the adoption of the resolution which he had proposed would be to adopt the main principles of the law of 1811. He should ask to have the resolution read from the chair, and it would then be in order to move that it be committed to a committee of the whole and made the order of the day for this day.



The resolution being read, Mr. WEBSTER moved as above stated.

Mr. MARTIN and Mr. NICHOLS opposed the commitment, and Mr. DWIGHT spoke in favor of it.

Mr. WILDE said that he should not have opposed the motion if it had not been placed on a ground that he thought was untenable; that some gentlemen were mistaken in supposing that it did embrace the substance of the law of 1811. Mr. W. thought that it did not contain the substance of that law. It did not contain the second section in any degree. That section provided that any person having obtained a certificate of a committee of any religious society, though he should not have contributed a cent towards the support of religion in that society, is exempted from taxation in the parish in which he resides. That was not contained in the proposition, but on the other hand it would require that all should be taxed in the parishes and the money drawn out. The only difference between it and the third article was, that it allowed persons to go from the regular society to another of the same denomination and to draw out the amount of his tax for the support of the society to which he has become united. The difference between it and the proposition for which it was a substitute was, that the latter allowed all societies to raise moneys by tax for their own purposes, and exempted the members of them from taxation, instead of allowing the taxes paid by such members to be drawn from the town and parish treasuries. He was therefore opposed to the commitment. He had never before voted against the commitment of any proposition to a committee of the whole. But this subject had been already discussed in the committee.

Mr. WEBSTER understood the rule of the House to be that every motion proposing an amendment of the constitution should first be discussed in committee of the whole before being acted upon in Convention. This had not been so discussed. He should not consider it a great extension of the courtesy of the gentleman to allow it the favor which he says he has extended to every other proposition. He asked if gentlemen expected to carry any amendment when it had been decided within half a vote that no further alteration was necessary.

Mr. WILDE stated his view of the rule alluded to.

Mr. WEBSTER asked how it could be known that a proposition had been discussed in committee of the whole, when there had been no report on the proposition.

The question was then taken on Mr. WEBSTER's motion and lost, 144 to 187.

Leave of absence was granted to Mr. McLELLAN of Coleraine.

On motion of Mr. WILLIAMS the Convention then went into committee of the whole, on the unfinished business of the forenoon; Mr. VARNUM in the chair.

The resolution offered by Mr. WILLIAMS as modified, was read.

Mr. WEBSTER stated his objections to the proposition. He asked

how it would be determined what was the maintenance of public worship. Three men, the richest in the community, might form a society, pay a shilling apiece, and have a sermon once a year, and this would be maintaining public worship. It would be impossible to define public worship in such a manner that this provision would not entirely do away the effect of the third article. It was not merely a contest for the manner in which money should be raised, but for the amount. He contended for an equality in the amount of contributions for the support of public worship and religious instruction, in proportion to the ability of each individual to pay. He would not leave it for the poorer class of the community to maintain a stated observance of public worship, while others shall have it at their option to meet once a month or once a year, and call that public worship.

Mr. PARKER of Boston did not expect to be called upon to enter the field of combat on any proposition. He thought that every one would be satisfied that he should not be willing to make any alteration in the third article that should impair the effect of it. The proposition which had met with his concurrence had been pronounced by the gentleman last speaking, to be the worst proposition that had been submitted. It might be so, but he should appeal to the sense of the Convention. If he should be satisfied that it would materially impair the effect of the third article, he would vote against it at the last stage. The essence and marrow of the article was, that towns and parishes should have power to levy taxes for the support of public worship. But there was another part of it which required that the rights of individuals should not be interfered with. The question now was in what manner this last object should be secured. Should it be done by taxing every individual within the parish lines, and giving permission to those who attend worship in other societies to draw out their proportion of the tax? What interest have the parish in taxing ten or fifteen persons who the next day after the money was paid would carry it away to their own minister. If there were persons who belonged to another society, was it not better to stop in the outset, and let them tax themselves? He thought this was the best mode. He knew that some of his friends were startled at it, but he maintained that it was better than the law of 1811. It was said that that law might be repealed. But there was no instance of a law of this kind, which extended an indulgence to a numerous class of people, being repealed. If it was repealed, it would produce a popular excitement that would require its reenactment. He considered it as permanent. By this law a person who does not attend worship in the parish where he dwells, by getting the certificate of a committee of any other society, shall be exempt from taxation. Such society may consist of five, ten or fifteen persons, and it is not necessary that they shall have a minister to give a certificate. By this proposition it is provided, that to exempt such person from taxation, he shall belong to some society where public worship is maintained. But gentlemen asked

who is to judge what is the maintenance of public worship. He asked who under the constitution was to judge? He did not know any better rule than to require that they should maintain the public worship of God. Suppose an action to be brought in which the question was involved whether public worship was maintained or not, and it would go to a jury to decide whether it was a society within the meaning of the constitution. It could easily be shown whether public worship was maintained in a suitable manner. It would undoubtedly be required that it should be maintained constantly, unless prevented by some accident or some sufficient reason. He thought the provision was more effectual than if it was attempted to designate the object by any form of words. The first part of the resolution he did not consider of much importance; it was at the worst but harmless.

Mr. FOSTER spoke against the resolution.

Mr. WEBSTER said he knew it was hard to defend a fortress after those who had been principally relied upon had abandoned the defence. He came into this debate at a late period. He believed that the third article might be useful, but this proposition was totally subversive of all that was contained in that article. It was called a treaty for reconciling those who had maintained different opinions. He wished not to be bound by the treaty. He would rather take the proposition of the gentleman from Pittsfield. After laying it down that it shall be the duty of the Legislature to provide for the support of public worship, it takes from them the power to make such provision. He would not put his name to such a treaty. The Convention, in the votes they had passed, had adopted the ground that the whole public as a community has an interest in supporting public instructors of piety, religion and morality. He knew that there were various doctrines—that it had been maintained that government had nothing to do with religion. He went on the ground that the committee had already established that the State had an interest in the support of religion. He was then for the State, and not for religion. If it was true, as the committee had determined, that the community has an interest in religion, he who has the greatest stake in the community, has the greatest interest in the support of religion. Whatever is for the public good, every one was bound to contribute to the support of, according to his ability. It having been determined that the support of public worship was for the public good, and that it was the duty of the community to provide for its support, he objected to any proposition that should destroy all equality of contribution. It could not be shown that this proposition would secure any equality. It makes one man subject to the law and binds him to contribute, and another not. It provides the means by which every man may avow the obligation, and leave the whole burden upon the well disposed part of the community. He thought that gentlemen were playing at extreme cross purposes for their own objects. One party is afraid to trust the Legislature with the power to repeal the law of 1811, by which

persons are exempt from taxation by joining a society which does not support public worship. But they are satisfied with this proposition. They do not mean to subject themselves by it to the liability of supporting public worship; they mean that every person shall contribute what he pleases, and be exempt from taxation on such terms as he pleases. He did not complain of this in those gentlemen; it was according to their principles. They had given sufficient pledge that they wished to strike out the whole of the third article. But he protested, that the Convention, having resolved that the people have a right to compel every one to pay for the support of public worship according to his ability, and that this is essential to the good order and happiness of the community, cannot consistently with this resolution pass a resolve by which every individual can avoid paying, under a plea of having joined a society where there is no security for the maintenance of public worship. He knew that societies might be formed, and that they had already been formed for the express purpose of enabling the members to evade the obligation. This proposition laid no foundation by which the Legislature could enforce anything like equality in the constitution for the support of religious instruction. He deemed there were persons who took a very limited view of this subject. There were those in that hall, who consider religion as something which concerns only the individual who receives it. He did not so view the subject. He considered it the only security of the good order of society, as the basis of the moral character of the community, as the only protection of a free government. The question was, whether we should take measures through the power which it was declared the government ought to possess to disseminate this religion, or leave it to the will of every individual. There were those who maintained that religion would take care of itself. There were others who had assumed another basis—that religion should be supported for the good of society—that it was a duty on society, which divided itself among individuals, in proportion to their interest in society, and their ability. He knew it was a growing sentiment, that religion had nothing to do with society. But it was not the sentiment of this Convention—and the duty of the Convention now was to carry into effect the sentiment which they had expressed. He said that if the proposition now before the committee should fail, he should renew that which he had made in the morning. He proceeded to state the substance and effect of that proposition, and to recapitulate his reasons in favor of it.

Mr. WILDE explained in relation to what he had before said on the subject of the law of 1811, and replied to some of the remarks of the gentleman who last spoke. He objected to introducing all the provisions of that law into the constitution, because it was not wise to go much into detail, because a change of circumstances may require an alteration of details, and because there were certain provisions of the law, which he stated, that would be liable to

great abuses. He compared the proposition of the gentleman who last spoke, with that now before the committee. One provided that persons belonging to other societies should draw out the amount of their taxes assessed in the parish where they resided; the other exempted such persons from taxation, with the essential provisions, that they should attend and contribute to the maintenance of public worship in the society of which they were members. He thought the latter proposition was not liable to the objection founded on the uncertainty as to what was a religious society. If it was an objection, the third resolution of the select committee was liable to the same objection. That resolution makes it the duty of the Legislature to authorize and require the several towns, parishes and religious societies, incorporated and unincorporated, to make suitable provision at their own expense for the institution of public worship. But there could be no difficulty in determining whether it was to be considered as a religious society in the meaning of the article. Another objection was that its operation would not be equal. He had entirely misconceived the nature of the third article, if this argument was of any weight. It was immaterial, if one town had a thousand dollars, while the adjoining town supported religious worship without a cent. Some religious societies were rich and others poor, and there must be an inequality. The sole object of the article was that every town and society should maintain public worship and public teachers of piety, religion and morality; and it was immaterial whether it was done for a salary, or was a labor of love. It was said that the support of this resolution was inconsistent with a regard for the third article. No one could feel a greater interest than he had in this article. What was the object of the article? It was that public worship shall be supported. This resolution provides that public worship shall be supported, and it includes the whole community. It was objected that there might be small societies to defeat the intention of the article. He did not think the argument was assisted by supposing extreme cases. Five persons worshipping in one family would not make public worship. It was paying a small compliment to those who would administer the laws to suppose that they would permit such an evasion of the provision. But suppose that a few families were to unite themselves for the purpose of joining stately in public worship. Where would be the harm? Whose right would be invaded? Were they not as likely to be benefited as if they were in large societies? As the law now stands, a man may join a religious society and be exempted from taxation in the parish where he resided, without ever attending in the society to which he united himself, and without contributing one cent to the support of it. This was what he was opposed to, and it was for that reason that he objected to incorporating the law into the constitution. He was willing to leave the third article as he found it. He did not wish to alter one paragraph of it. Even that paragraph which authorized the Legislature to enjoin attendance on public worship,

in his mind was harmless. But he was willing to yield to the opinions of other gentlemen where no important principle was yielded. He thought that introducing this provision would greatly amend the law of 1811, and would guard as far as possible against all evils. He should agree to the resolution.

Mr. FOSTER was opposed to the resolution. He thought it would destroy the effect and value of all that had been agreed to. The gentleman last speaking had objected to supposing an extreme case. He objected to supposing a society of five. He (Mr. F.) would suppose a society of twenty, a number which a committee of the Convention had supposed sufficient. Three families would constitute the number. What Legislature would ever compel them regularly to support public worship? If they attempted to compel them, the society would be unable to do it. A common parish might be divided into half a dozen such societies, and not one of them would be able to support public worship. He had known a case where a person went half a day to meeting for three years, and paid a quarter of a dollar for a certificate which exempted him from taxation in the parish where he resided. Rather than adopt such a measure, he would go home and say that they could do nothing. He vastly preferred the proposition of the gentleman from Concord. All denominations now enjoyed equal rights, and this was all that could be required. How was it possible for men to form themselves into society, and every individual to retain all his opinions and rights as if he did not belong to any society.

Mr. DUTTON said, that we had been told by gentlemen that these resolutions were so plain, simple and definite, that there could be no mistake or uncertainty as to their import. They did not so appear to his mind. The first resolution creates a new sort of corporations, unlike any that now exist, and unknown to the law. They are quasi corporations, and he asked gentlemen to define their properties, the extent of their powers and duties. Under the operations of these provisions, cases would arise, that would bring before our courts questions of real doubt and difficulty; and there would be a fruitful crop of lawsuits, about which we have heard so much lamentation. By the second resolution it is provided that any man may go from one society to another without furnishing any evidence of the fact. The assessors of a parish know not who to tax; the burden of proof is thrown upon them, they must proceed at their peril, and if they make a mistake a lawsuit ensues. He was aware it might be said that the Legislature might provide for the case. It was true that they might, and it was also true that they might not. It had been objected to these resolutions that any man might exempt himself from the payment of the usual parish tax, by contributing a trifle to one of these voluntary societies; and this objection was answered by the reverend gentleman who moved the resolution, that he would never receive any one into his society unless he paid as much as he had been accustomed to pay. He thought it disgraceful. He was willing to give that gentleman full credit for

his good intentions, but it was necessary for the committee to see that his resolutions executed his intentions. Would he undertake to answer for the hundreds in the State, situated as he himself was, or if he would could he give us any security for his undertaking. The resolutions were open to the full force of the objection, that a small number might form one of these anomalous societies, and exempt themselves from the support of a regular Christian teacher. All the resolutions, plain and definite as they were said to be, were doubtful, indefinite and uncertain. This of itself was a sufficient objection to their adoption. The constitution on this subject he understood ; the law of 1811 he understood ; they had been tried, their operation had been felt and ascertained, by experience and the judgment of our highest court. Much had been said of vexatious and oppressive lawsuits—but did these never arise from any other parochial concerns, such as highways, schools, &c. ? It is true that individuals and parishes do sometimes mistake their rights, sometimes demand more than is their rights, or what is not their rights, and go to law under improper motives and feelings. On this subject he would suggest one expedient to those gentlemen who were so very anxious to provide against all abuses, accidents and possibilities, to insert a provision in the constitution that no man or corporation should hereafter mistake their rights, demand more, or what was not their right, and should never resort to the law to gratify their passions.

Mr. LINCOLN of Worcester said that if left to the dictates of his own understanding, the proposition of the gentleman from Beverly, as modified by the gentleman from Boston, would be the last that he should be willing to vote for ; and this for the reasons already given. The gentleman from Beverly would find he had yielded more than he intended, and the gentleman from Boston would find that he had gained more than he intended ; but as these two had agreed, he should accede to their proposition on the ground of conciliation. This was called a religious subject, but it had excited much irreligious feeling ; to him however it seemed to be a civil subject. With respect to the plans offered, he must take this or some other ; he should not attempt to vindicate this in preference to any other. Under the constitution a law had passed which goes vastly further than this proposition for destroying all obligations for the support of religious worship. It had been decided that a law was constitutional which enabled any number of persons to constitute a society, if there were but enough to form a committee, and to be exempted from taxes, although a provision for public worship was not made. The gentleman from Sturbridge (Mr. LEONARD) had been procured by a society to officiate as often as there were five Sundays in a month. He was plaintiff, as the teacher of that society, in an action brought to recover the taxes paid by a member to the town treasurer, and he gained his cause. The present proposition will abridge the liberties granted under the constitution. Those who had accepted the modification had deceived themselves.

If he understood the gentleman from Boston (Mr. WEBSTER) he objected to this proposition that it did not secure an equality of contribution. There never was such an equality. In the town of Boston the rich man paid not with reference to his property, but the goodness of his pew. If it was meant to give different denominations the right of worshipping according to the dictates of their conscience, they ought not to be obliged to pay equal contributions. There would be circumstances to warrant different salaries for their respective teachers. He had said there was much excitement in respect to this third article; he said so still; and not only to alter but also to retain the article. He agreed with the gentleman (Mr. WEBSTER) that there were two parties; but when neither could be satisfied it was better to take a medium—take the best they could obtain. It was certain that men did work themselves up to a belief that it was a matter of conscience not to pay for the support of a teacher of a different denomination, though he agreed it was not properly so. He was not a dissenter himself—he gloried in being a Congregationalist; but he had a respect for the consciences of others and was willing to sacrifice much in their behalf. He wished other gentlemen to make some concession—not to him—but for the sake of public harmony and satisfaction.

Mr. J. PHILLIPS of Boston wished to say a few words in relation to the introductory remarks of the gentleman who had just spoken. He (Mr. LINCOLN) said that the proposition of the gentleman from Beverly, modified at the request of the gentleman from Boston, was the last he should have been willing to receive—that one had conceded more than he knew, and the other had taken more than he intended—yet if they were contented he should not oppose. Who were *they*? The article was to operate not upon a few individuals in this house, but upon the whole community. He thought that the gentleman if he acted upon such considerations had mistaken his duty, and ought to revise his opinion. Much time had been expended in debate on this question—much of it in compliments which were of no use. The time had arrived when they should speak in plain language, but with perfect good will. The proportion of Congregational parishes was as 450 to 150 of all other denominations. Suppose that the 150 go to the root of the question and say that it is a matter of conscience not to be taxed for the support of religious worship. The 450 differ, and say that it is not a matter of conscience, and that the right of taxing is essential to the happiness and good order of society. Who ought to submit on this question? Certainly the minority until they became the majority, and then he as one of the minority would be willing to submit. Why should they go on to modify the third article until they had frittered away all its essential provisions? One party would never be satisfied until they broke down the great principle which was involved in it. He contended that it was useless to attempt to reconcile the contradictory views of the two parties on this subject. He was opposed to the resolution.



Mr. HOAR said there were many reasons to induce him to vote against this proposition, some of which had not been submitted to the committee. If it was true, as suggested by the gentleman in the gallery (Mr. LINCOLN) that certain gentlemen in this amendment conceded, and certain other gentlemen gained more than they were aware of, this was a sufficient reason. Whether this was or was not the case, he still regarded it as containing not only the seeds, but the whole substance of the dissolution of the third article. The committee had now come to the very point which occasioned so much delay in the select committee. The propositions of the different gentlemen seemed to be irreconcilable in their nature. One side contends that government has no right to interfere for the support of religious worship. Did those who contended so earnestly mean to yield this principle? He believed in their consistency; that they would not yield it. They were then deceived. Did they consider this principle as relinquishing that ground? If so, they were not deceived, and could not complain; but would they remain patient and satisfied with this proposition, or would that part of the community be satisfied whose views they represented? On the other hand, would it be yielded, after the vote which has been already passed, that society has no right to provide by law for public worship? He could not believe it would ever be yielded. The right of self government would as soon be given up. The first was as dear and as important to us as the last, and the one could not exist without the other. Was it then the intention of gentlemen to regard this proposition as a compliance with the great principle of the third article already adopted? He did not consider it as a compliance. A small society may meet, and while religious worship is maintained, government cannot interfere. Suppose forty or fifty persons choose to assemble every Sabbath and alternately offer prayers. There is no way of compelling them to do more. Religious worship is thus maintained, and whatever abuses take place the Legislature has no power to correct them. He asked gentlemen to reflect that they were not making a law, which could be repealed when found inconvenient, but a provision to be engrafted into the constitution. What would be the situation of our towns? A minister becomes unpopular; some of his society leave him. The burden thereby becomes heavier on the others, and this induces some of them to leave; so that half a dozen only, or still fewer may remain. The law compels the town to support public worship; is this small remainder then to be punished because public worship is not maintained in that town? And yet he did not know how this difficulty was to be avoided. This was a practical reason—not one of the imagination. Such instances had occurred, and might occur again. He wished to avoid this inducement for going from one society to another. It was said, that if the object was obtained, it was immaterial whether a person paid as much at the second society as he did before. He apprehended that the absolute annihilation of religious societies would ensue. ~~Leave the~~ power to the

Legislature to prevent this evil, and he would be content. But he thought the gentleman who introduced this proposition never would consent to this, and by his proposition the Legislature would not have the power. It was said they were under the necessity of adopting this or some other proposition, which had been submitted. He thought not. There was another alternative. They might leave the constitution where they found it. They knew the evils of this and that they were scarcely ever complained of. They did not know what might be the effect of the new and untried system. Until it should be demonstrated that good would flow from it, they ought to adhere to the old provisions of the constitution.

Mr. AUSTIN of Boston said, that when the proposition of the gentleman from Beverly was first made, it was not very palatable; and that as now modified it was totally inoperative in regard to the support of public worship. He was surprised and gratified to hear so much respect paid to the law of 1811. There was a time when that and every other act of that period received but little favor. He was glad that one good thing could come out of Nazareth. Good as the law was, however, he had rather have it a law than a part of the constitution. The general principle of it we understood; we knew its operation. The state of society may render some changes necessary in its details. He was willing to trust this to the Legislature. There was no danger that they would not consult the will of the people. If the third article remained, its abuses would be remedied by the Legislature, who were entrusted with power in respect to the details on subjects equally dear and important to us. He considered the principle of the third article worthy to be preserved, and so the committee had determined by a large majority. He implored them not to fritter it away; not actually to repeal it. The proposition before the committee gave power to every little community of three or five persons the rights of a large corporation. He asked if religious instruction could be so well disseminated by these little societies. They could not and would not pay for instruction. It would be an evasion. Instead of attending public worship once in a month, whenever a month had five Sundays in it, they would attend once in a year, whenever there were twenty-nine days in February. Religion will not take care of itself; it requires money. When corporations were established, it was usual to put guards upon them. Here hundreds of societies were to be incorporated by the constitution without any guards, and it was his apprehension that they would be found doing devil's work, rather than the work of God. It had been said that an alteration of the third article was demanded by the voice of public opinion. This was refuted by the equal vote given in the morning. He thought that no change was necessary—that the Legislature could remedy all evils arising under the article, and that its operation on a man's conscience affected only that part of it which was situated in his pocket.

Mr. SALTONSTALL said the subject had been long under debate,

and there had been symptoms of impatience, but we had better sit quietly till midnight—till morning—than be driven to a decision which would be unsatisfactory to ourselves and to the community. When the report of the select committee was introduced, he had offered a resolution which proposed not to alter the third article, except by substituting the word "Christian" for "protestant." This was afterwards amended on the motion of his friends—it was not capable of division, and he preferred it should be voted down, as he knew his friend from Concord, (Mr. Hoar,) was about introducing one like his own originally, and this was the reason of his not replying to the gentleman from Worcester. This has also been postponed for that now under consideration, which has been amended by those whose views he had thought similar to his own, but which he felt bound to oppose. The subject is of immense magnitude—of infinite importance to the people of this Commonwealth for time—for eternity! No vote has given so much satisfaction to a large majority of this House, and of the whole community, as that by which we resolved substantially to retain the constitutional provision. It was a noble resolution—and shall we now annul it by an inconsistent resolve? It has heretofore been a settled principle, not to alter the constitution, unless a large majority was for the change. We have said the presumptions are all in its favor—but upon this subject the order is inverted; as to the third article it must be struck out, unless a large majority is for retaining it! And we are called upon to select from among the amendments, and this by gentlemen who are satisfied with the article as it stands! Where is the consistency of first resolving to retain this provision, and then adopting an amendment which will take away its effect—at least all good effect? What will be the situation of our parishes? We oblige them to support a public teacher, and then put it out of their power to do it. To-day a minister is settled with unanimity—tomorrow, one man is dissatisfied—this disaffects another, a third takes a freak, and a voluntary society starts up—and another perhaps; this increases the difficulty, and the parish is broken up. This resolution holds out a lure—offers every inducement to people to cherish discontent and division. Heretofore the policy of our system has been different. It has been for the interest of all to promote harmony, and the minority in the settlement of a minister have generally united with the majority—but now they will withdraw, and form a new society, or *sign off* as it is expressed, to one of those associations who raise their money by voluntary subscription, and where they may pay what they please—a shilling or nothing! Conscientious scruples, already so plenty, will greatly increase. Tax me so much again, and I will become—anything to avoid it, will be the language of many. The third article will only impose a burden upon the conscientious part of the community, who will not evade the true intention of the constitution and laws. Mr. S. said there had been many frauds and abuses under the law of 1811, and related some, and observed that it was

not in the power of the most respectable and best intentioned ministers to prevent them. Is the resolution to put an end to doubts and controversies? It is full of uncertainties. The first part authorizes every society to raise money, &c. What sort of creatures will these corporations be? Will they be corporations? Will actions lie against them? How are meetings to be "warned and held according to law?" Is not the object really to obtain power in this indirect manner, to raise money by force of law? We heard a great deal the other day about *law religion, and compulsory processes!* "Not a cent would I receive," said a reverend gentleman, "unless it was given voluntarily!" It will be wholly uncertain to what society people belong—now they must produce a certificate, but this is thought degrading, and the parishes are to take all the risk, and the individual may prove in any way that he belongs to another society. An excellent way to put an end to lawsuits, of which we have heard so much!

And what is "public worship?" At present, societies must maintain public teachers of "piety, religion, and morality;"—the diffusion of which is the great object of the constitution; but if half a dozen meet together to read the Bible or a religious newspaper, it will be within this resolution. This may become a fashionable mode of complying with the constitutional provision—it will certainly be a cheap one. How is the constitution to be enforced? What process will lie against these societies? It is all doubt and perplexity, and for one lawsuit we shall have twenty. Another circumstance and more than all the rest is, that all the religious societies will at once be set afloat. "Every person shall have full liberty of uniting himself with what society he may choose, and every person neglecting to unite, &c. shall be liable to be taxed." Is not this deposing all our religious establishments? And what privilege will it be to tax such as neglect to unite with some society? Who would rush into a multitude of suits to settle the question? We have heard something about public excitement, and gentlemen have addressed themselves to our fears. What have we to do with public excitement? We are sent here to revise the constitution. We are to do our duty, and not propose alterations when we think they are not necessary, from any such influence. We are to consult our own consciences—our own understandings—not our fears, nor to regard any excitement abroad, should it exist. But there is none—we see nothing of it. This Convention would not have been called, except on account of the senate. There is no excitement—there is no cause of any—no oppression—no abuses for many years—never any to excite any general discontent—never any for which the constitution is responsible. A part of the community have recently set up an alarm—but the great majority are quiet. We are free—we have all had perfect freedom of conscience. The excitement is got up here—we have reared it ourselves, and gentlemen may work themselves up to a belief that they have been slaves! "Ease us of our burthen," says a reverend gentleman.

There are no burthens. "Toleration" is a word that does not apply here—all are put on the same level by the constitution—that puts it out of the power of man to establish ecclesiastical tyranny. It cannot exist. That is our security. But one would suppose from the debates that we had been manacled—that tortures, faggots, the stake, were common instruments of punishment, and that an *auto-de-fé* burning a few heretics, was an occasional offering for the amusement of the *standing order*! Let us make use of our own senses and understandings, and whatever excitement may be raised, do our duty—"fiat justitia, ruat cælum."

Mr. WILLIAMS replied to some of the remarks of the gentleman who spoke last, and answered a number of objections made by other gentlemen to the resolution. He denied that there was a great deal of detail in it. He said that it was intelligible, and that common sense would dictate what was meant by "religious society." He did not believe that persons would take advantage of the expedient of forming small societies to avoid payment of taxes. He knew of no such instances. As far as his observation extended, he knew that those who had engaged voluntarily in the societies to which they belong, paid more money for the support of public worship than they did in the parishes in which they resided.

Mr. WEBSTER said, that if any apology were wanted for troubling the committee again, he thought he might find it in the present attitude of this debate. A vote of the Convention had decided, after full and free discussion, that that part of the constitution which authorizes the Legislature to enable towns and parishes to tax their inhabitants for the purpose of maintaining public worship, should not be struck out. He himself had taken no part in that discussion. He was content with the constitution as it was, however, with the laws which had been passed under it, and the judicial construction which those laws had received. But the general principle being thus settled, the gentleman from Beverly had proposed a modification, which he (Mr. WEBSTER) thought, and others thought, would go to do away that principle altogether, and render the whole article a dead letter. The gentleman from Beverly was quite consistent in this. He wished the whole article done away. If that purpose had not been effected in one way, it was quite fair for him to try another way, and to do that indirectly, which he had not been able to do directly. No man saw his object more clearly, or followed it more steadily, than the member from Beverly. But what gave so singular a complexion to this question was, that the honorable member from Boston and the honorable member from Newburyport, both of whom had been advocates for the general principle, afforded their support to the present proposition—called it a compromise, and an amicable arrangement; and another honorable gentleman had congratulated the House on this happy termination of all our labors on this subject, through the joint counsels of the member from Beverly and the member from Boston. Now the truth is, that nine out of ten of all those members who have sup-

ported the general principle of the article,—who have stood shoulder to shoulder in its defence, against the powerful attacks of the gentleman from Beverly and others, believe that the present happy arrangement gives up the whole principle, and defeats all their object. Much had been said about concession and accommodation. But he trusted gentlemen would consider that there were various opinions, and there was to be a consultation of the sentiments of one side, as well as of the other. Whatever was conceded to one opinion, was against the feelings of those who held the other opinion. It had been supposed to be discreet usually to follow the old maxim, which might be found in the manual on the chairman's table, not to put the child to an enemy to be nursed—yet, on this occasion, it was proposed to receive from the member from Beverly, a mode of executing and effecting a provision, to which provision that gentleman was known to be entirely hostile. There might be much of magnanimity in this, but he did not see much of common prudence. He begged therefore the member from Newburyport to consider, not only to whom, but from whom, he was making these concessions. That honorable member had decidedly expressed his own satisfaction with the third article as it at present stood, without any amendment whatever. He professed to be acting on this occasion, from a desire to satisfy others. He begged the gentleman would consider, that while some might rejoice in this course of things, others would lament it; and it was for his own determination, how far he would oppose the steady friends of the main question, in order to conciliate its steady and systematic opposers. There was another part of the speech of the member from Newburyport, on which he would remark. He (Mr. WEBSTER) had asked whether, under this provision, any three persons, or five persons, uniting together and paying a shilling a year, would not be a *society*, within this provision, so as to be exempt from all other taxation? The honorable member, in answer, had said he doubted whether such an association would be a constitutional society, under this amendment—and if he doubt whether three or five persons would constitute such a society, he probably may doubt whether ten or fifteen, or twenty would do it—and if he doubt on that question here, he will doubt, probably, when the question shall be brought before him as a judge—and if the judge doubt, the jury will probably doubt—and if judges and juries doubt, everybody may well doubt;—and then what becomes of that certainty and preciseness, which this most fortunate arrangement would introduce into the constitution? He (Mr. WEBSTER) had contended that the present proposition went to establish a great inequality. He had asked whether, under this provision, while one man may be compelled to pay ten dollars, another man of equal property, might not be excused by the payment of as many cents? To this question the honorable member had given only this answer,—that the equality to be maintained, was not an equality of *expense*, but an equality in the quantity of religious instruction. He was wholly dissatisfied

with this answer. How did the honorable member expect this instruction to be obtained? It had been most forcibly asked, in another place, whether we expected angels to be sent down to instruct us, or manna to be rained from heaven for the support of our instructors. Does not the honorable member, and everybody else, know that the quantity of instruction must be, in every community, proportionate to the pains taken and the expense incurred for it? When the constitution speaks of a *support* for teachers of religion and morality, does it not mean a *pecuniary* support? When it speaks of a *provision*, in this respect, does it not mean a *pecuniary* provision? When it speaks of the *expense* to be incurred for such objects, does it mean an expense of prayers and supplications for the interposition of miracles, or does it mean a *pecuniary* expense to maintain religious and moral instructors? It was too clear to be argued that there could be no equality, unless there was a security that one man, of a given amount of property, should pay as much as his neighbor of the same amount of property. It had been asked by the honorable member, again and again, whether all sects might not raise money in any *manner* they chose? That was not the true question. The question is, may they all raise it in whatever *amount* they choose; so that while one half the town or parish are compelled to pay at a certain fixed rate, the other half may pay at whatever rate they choose—this was the real question. In short, the effect of the proposition was to put it into the power of half a dozen rich men in a parish to form one of these new created societies, and pay a dollar a year, while all the expense of maintaining public worship and religious instruction should, in effect, be thrown on others. He was therefore decidedly opposed to the proposition. Either the whole provision ought to be struck out, or else it ought to be made to bear equally. He could not consent to tax one half of the community for a common object and leave it to the discretion of the other half to tax themselves or not, as they might please. If religious instruction was to be had, and to be paid for, it ought to be equally paid for; and if the general provision could not be retained, except with such modifications as destroyed all equality of contribution, he was in favor of striking it out altogether. He was therefore more decidedly hostile to this proposition than to that of the honorable member from Pittsfield. He would only add, that he had often heard of the capitulation of those who were vanquished, and of the surrender, at discretion, of those who could hold out no longer. He remembered, however, a few cases in which those who had struggled successfully in an important contest, had nevertheless, in the very moment of victory, surrendered at discretion.

The question was then taken on the resolution, and lost—179 to 186.

The committee then rose, reported progress, and had leave to sit again.

At 8 o'clock the Convention adjourned.

THURSDAY, DECEMBER 28.

The House was called to order a few minutes after 9 o'clock, and attended prayers offered by the Rev. Mr. Palfrey; after which the journal of yesterday was read.

Mr. VARNUM's motion to rescind that part of one of the rules of the Convention, which makes a question to strike out and insert indivisible, was taken up.

Mr. VARNUM observed that he did not know whence this rule came; it might have been one of the rules of our house of representatives. It was, however, attended with inconveniences. A different rule was practised upon in both houses of Congress, and had been found to be convenient. There the part to strike out is first put; if it is decided in the negative, the other part falls of course; but if in the affirmative, then the matter offered by the mover, or any other matter, may be inserted.

Mr. PICKMAN supported the motion.

The question was then taken, and the motion agreed to.

Mr. VARNUM said he thought the House had sufficient experience that nothing was to be gained by having an afternoon session. It would be better to prolong the forenoon session to a later hour. With a view therefore of having but one session a day, he moved that in future the House should meet at 10 o'clock.

After a slight debate, it was voted that when the House adjourned, it should adjourn to half-past 9 o'clock, to-morrow morning.

Mr. BOYLSTON of Princeton, at the suggestion of Mr. ADAMS of Quincy, who was absent, offered a resolution proposing to alter the constitution, so that instead of "every denomination of Christians" &c. it should read, "all men, of all religions, demeaning themselves peaceably, and as good subjects of the Commonwealth, shall be equally under the protection of the law." Referred to the committee on the declaration of rights.

*Declaration of Rights.*—On motion of Mr. DANA, the House went into committee of the whole on the unfinished business of yesterday, Mr. VARNUM in the chair.

The question was upon the fourth resolution of the select committee.

Mr. DANA made a motion for taking the question upon the first part of the resolution, excluding both provisos. The chairman thought the question was not divisible.

Mr. HOAR of Concord said the committee had spent a great deal of time, without making any progress, in considering proposition after proposition for a change in the third article. To bring it to a test, whether a majority of the committee were in favor of making any further alteration in that article, he would move that the committee rise, report the progress it had already made, request to be discharged from the further consideration of the fourth resolution, and ask leave to sit again on the other resolutions committed to them.

The motion was carried—181 to 120.



The committee reported its disagreement to the first resolution of the select committee, and its agreement to the second and third, and was discharged, and had leave to sit again in conformity to Mr. HOAR's motion.

Leave of absence was given to Messrs. KENDALL of Westminster, and VALENTINE of Hopkinton.

The House again resolved itself into a committee of the whole on the declaration of rights.

The fifth resolution of the select committee, proposing a change in the twelfth article, so that in criminal prosecutions every person shall be fully heard in his defence by himself *and* (instead of *or*) his counsel was agreed to without debate.

The sixth resolution, proposing to alter the seventeenth article so as to say that armies ought not to be maintained without the consent of the Legislature, *and in conformity to the constitution of the United States*, was agreed to without debate.

The seventh resolution, proposing to alter the twenty-third article so that no subsidy, &c. shall be levied without the consent of the people or their *representatives* (instead of *representatives in the Legislature*) was adopted without debate.

The eighth resolution, proposing to alter the twenty-seventh article, so that in time of peace no soldier ought to be quartered, &c. and in time of war such quarters ought not to be made but by the civil magistrate in a manner ordained *by law* (instead of *by the Legislature*) was read.

Mr. WEBSTER said he thought these resolutions ought not to be passed without knowing the reasons for the several alterations proposed. He wished some gentleman of the select committee would state them.

Mr. BLAKE said the object of the alteration proposed in this and some of the other resolutions, was to do away the repugnance in those parts of our constitution to the constitution and constitutional laws of the United States.

Mr. WEBSTER said that alterations for that purpose were injudicious. If any part of our constitution was repugnant to the constitution of the United States it was rendered invalid by the adoption of that constitution, and would do no harm if it remained. The resolutions would make one suppose that these principles had never existed in our constitution. The proposed changes worked no alteration in the substance of the constitution ; they were too unimportant to be made, and would require a great deal of trouble to explain them to the people.

Mr. SULLIVAN of Boston was of the same opinion. The constitution was very proper at the time it was made, and since the adoption of the constitution of the United States it had received a practical construction which rendered such alterations unnecessary.

Mr. BLAKE said the alteration would remove doubts, if any existed ; the revised constitution of Pennsylvania had adopted alterations of this sort.

Mr. PARKER said that if by misfortune we should ever cease to be governed by the constitution of the United States we should want our constitution as it now is.

Mr. SIBLEY of Sutton spoke in favor of the amendments.

Mr. JACKSON said he had understood from one of the select committee that these amendments were proposed on the supposition that a new draft of the constitution would be made. That was the case in respect to the constitution of Pennsylvania. The alterations were wholly unnecessary. It would be asking the people whether they would consent to any part of the constitution of the United States which was repugnant to our own. The matter was already settled.

Mr. LINCOLN of Worcester said a change in the phraseology might cause it to be supposed that a different construction was necessary, when no alteration in the sense was intended.

Mr. BLAKE said the alterations were made, as had been mentioned, on the supposition of a new draft.

The question was taken upon the resolution and decided in the negative.

The ninth resolution proposing a change, on the same ground, in the twenty-eighth article, was negatived.

The votes adopting the sixth and seventh resolutions were reconsidered and reversed.

Mr. KEYES of Concord moved a reconsideration of the vote adopting the fifth resolution.

Mr. HUBBARD inquired whether there had not been a construction that *or his counsel* in that part of the constitution meant *and, &c.*

Mr. PARKER said it was generally permitted to the prisoner in any criminal case to speak by himself, as well as by his counsel, but perhaps it was not a right; in capital cases it was never refused. It was better in some cases that it should be left to the discretion of the judge. There were instances of prisoners drawing up long speeches which were mere rhodomontade, having no connection with the cause and sometimes tending to their own injury. If the amendment is made, the court and jury must hear all this without any remedy.

Mr. JACKSON said this was a case for legislative provision. If an instance of injustice should occur, the Legislature would make the provision, and if found inconvenient, it could be repealed.

Mr. AUSTIN of Boston said he knew there was great liberality in our courts, but he thought this was a right which ought to be secured in the constitution. He had rather see the right abused than have a man sent to the state prison without being fully defended. He had known cases where some things had escaped the attention of ingenious counsel, and the prisoner was acquitted upon the relation of facts within his own knowledge.

Mr. DANA said the great complaint of judges and juries was, that too much was said in trials; a great deal that was irrelevant. No provision on this subject ought to be in the constitution; it should be left entirely to the Legislature.

Mr. DAWES said he had had twenty years' experience as a judge in the Boston Municipal Court; when prisoners had no counsel, he had told them they might speak, but that they were not obliged to; and sometimes he had told them they had better not. Sometimes the man himself tells a long story which has nothing to do with the evidence and frequently hurts himself. Whenever they speak after counsel, they generally hurt themselves. It was better to leave the subject to the discretion of the court.

Mr. AUSTIN of Charlestown made an appeal to the humanity of gentlemen and hoped it would not be unheard. He was sorry to differ from the learned judges who had spoken. He presumed inconveniences would attend giving this right to a man, to be heard by himself as well as by his counsel, but it was a fact that persons accused were borne down by the weight of the government, whether they were innocent or guilty. The public prosecutor opens upon the prisoner with all his might, as if it was his duty to convict. The jury are prejudiced by it and perhaps the judge. Under these circumstances, if a man was not allowed to speak himself, it was an injury. If he was innocent, he must be eloquent. There ought to be a balance to the weight of the government. It was founded in cruelty that a man, in cases affecting his life or character, should not have the power of speaking in the last resort. He would not give the government the closing word. There were other cases where this privilege was as important as it was in capital cases. He should prefer taking up a little time of the court and jury. A long time was short when a man's character as well as when a man's life was at stake. In all countries cases had occurred in which innocent men had been pronounced guilty.

Mr. PRINCE of Boston hoped the vote would be reconsidered for several reasons. First, he was opposed to any amendments not necessary. Second, the Legislature had power to make provision on the subject. Third, judges are always disposed to the side of humanity. Fourth, prisoners who speak for themselves generally injure their cause.

Mr. PARKER, in answer to Mr. AUSTIN of Charlestown, said the government had not the closing word; the court had it as counsel for the prisoner; and they frequently prevented a prisoner from being punished, where he was actually guilty, merely for a defect in point of form. In England, to which country he presumed the gentleman alluded, prisoners were heard by themselves, and perhaps this was the reason of innocent persons being convicted.

Mr. BLAKE said we felt no disadvantage in trusting to the discretion of the judge, when we had judges so virtuous and enlightened, but there might be wicked judges hereafter, when the privilege would be important. In each of the other states the party accused had the privilege of being heard by himself and his counsel.

Mr. WEBSTER said that he had no objection to this provision, if it were deemed at all necessary. He should rather think that the provision as it stands would be construed to allow the defendant to

be heard by himself *and* counsel, subject to the discretion of the court as to the number of counsel. He rose, however, principally for the purpose of adverting to the respectful and decorous manner in which criminal jurisdiction is administered in this country. We may court, in this respect, a comparison with any country on earth. In favor of the defendant, everything reasonable is allowed. He is presumed innocent; his guilt must be proved, and if a doubt remains that doubt saves him. On the other hand, public opinions as well as the courts themselves, demand that his defence should be conducted with decency and respect. One is shocked at the license of tongue indulged by defendants, in these times, before the courts in England. Great, indeed, must be the profligacy of manners, where such licentiousness finds any countenance in public sentiment. The lord chief justice of England is, almost every month, bearded and insulted in a manner which would not for one moment be tolerated by any justice of the peace in this Commonwealth. Our courts allow every man to say and prove everything which can aid his defence; but neither to state nor to prove what has no connection with his indictment. He (Mr. W.) had noticed lately, that in some of the criminal trials in England, the defendants had narrated personal anecdotes of the judge, and quoted opinions of the judge's father, and everything else which he thought would be offensive and insulting to the judge—all the judge did was to admonish him that this would not help him, and to tell him that he should not allow him to call witnesses to prove such statements. The object of the defendant, in such cases, very often is, to provoke the court to some act of severity, by which he excites clamor or sympathy, on the ground that he has not had a fair trial. With us, such clamor is not easily nor groundlessly excited. Public opinion upholds the authority and dignity of the courts—the jury, the spectators, the witnesses, the bar—every body concurs to signify to the defendant that he cannot gain anything by effrontery and abuse. He finds a respectful course best for him. Instead of affronting and defying the judge, he relies upon him, to give him every advantage of the law, and usually he so relies with safety. For his (Mr. W's) part there was no part of our institutions which he looked on with more respect, when he compared them with similar institutions elsewhere, than our courts of criminal jurisdiction.

Mr. J. DAVIS of Boston said the weight of government was not against the prisoner. The sympathy of the spectators, of the gentlemen of the bar, of the jury, he would not say of the judge, was usually on the side of the accused. Generally, discreet counsel wish their client to be silent. He had sometimes regretted that prisoners made use of the privilege to their own detriment. If a prisoner is left to his choice and he employs counsel, he may remain silent without any implication of guilt; but if he has a right to employ counsel and to speak himself, his silence might be interpreted against him.

Mr. MARTIN of Marblehead gave his reasons for allowing the pris-

oners to speak himself as well as by his counsel, and among others that courts were not always upright. In other countries judges had been hanged for bribery; and there was no reason to think that our judges will be more pure than they are in other countries.

Mr. KEYES said he moved for the reconsideration, supposing the alteration was proposed on the ground of having a new draft of the constitution. He hoped that would not be the case, and that no trifling amendment would be sent out to the people. The practical construction always had been, and would be, to allow the privilege in capital trials. In other cases we ought not to throw open the door, to let in great inconveniences, when not a single inconvenience had been pointed out in the present system.

Mr. LINCOLN of Worcester said this was a question of more than ordinary interest, and if the amendment should finally prevail, it would throw great confusion into our courts of justice. In fourteen years of practice he had generally been on the criminal side of the docket, and could therefore speak from experience. He thought that under our laws nine guilty persons, he believed he might say ninety-nine, escaped, where one who was innocent, suffered. No better expedient could be devised than this privilege, to give the lower class of people an opportunity of injuring themselves and of insulting the court. Men in prison sometimes spent day after day and week after week in drawing up a history of their lives which had nothing to do with the case, and their counsel were often embarrassed in endeavoring to keep them still. He asked whether the gentleman from Charlestown would be willing to be degraded, so as to let a weak and ignorant man follow him, on the supposition that he had not done justice to his cause. It was said that we might have wicked men on the bench. When that case happens, constitutional provisions would be of but little effect.

Mr. L. said this was a case, if there were any, in which we might have confidence in the Legislature. He never knew of a conviction when the prisoner said he had not had a fair trial.

Mr. SLOCUM spoke against the reconsideration.

Mr. AUSTIN of Boston said the arguments of gentlemen in favor of a reconsideration were directly contrary to each other. Some said the law now allowed the privilege, and some said it would produce great inconveniences if it should be allowed. And to whom would it be inconvenient? Why, to the prisoner, who asks that he may be heard in his own defence. Be the evil upon his own head. It was said the Legislature were competent to make suitable provisions; if so, he was willing to strike out the whole clause; he would not make a half provision in the constitution. He said there had been cases, in which the whole government armed itself against an individual. He stated cases of libel.

Mr. MORRIS of Dorchester said there was no country on earth, where criminal justice was more equitably administered than with us. He described the present practice and pointed out the consequences of adopting the amendment. He hoped the vote would be reconsidered.

Mr. SIBLEY of Sutton said he was gratified when the vote was taken. If the time of courts should be taken up with listening to the stories of the prisoners, that was better than that the innocent should suffer. They were not making a constitution for the court and the bar, but for the people. He hoped the motion to reconsider would not prevail.

The question for reconsidering was taken and determined in the negative—148 to 154.

The resolution offered by Mr. HINCKLEY, proposing so to amend the declaration of rights that no person shall be liable to be tried for any offence for which the punishment is imprisonment, or otherwise ignominious, but on the presentment of a grand jury of the county, was then taken up.

Mr. HINCKLEY expressed his views in favor of the resolution. He was on the select committee, to whom was referred the consideration of the declaration of rights. He thought that the rights of individuals in the point to which this proposition relates, were not sufficiently protected, and he submitted the subject to the consideration of the select committee. Their attention, however, was long occupied by the more important questions involved in the third article, and they were not able to give this proposition that attention which its importance demanded. He did not know that the Convention would think it a matter worthy of their attention, but he thought it was a defect in the constitution, that the citizens were not sufficiently guarded against prosecutions by the government. He had known an instance, many years ago, in which the attorney-general having failed to obtain an indictment by a grand jury against an individual, had threatened to proceed by information. He thought that every individual ought to have the security of not being brought to a public trial until an offence had been charged against him by the grand inquest of the county, and that counties should not be subject to the expense which would be incurred by trials originating by information.

Mr. PARKER of Boston said it was remarkable that when the constitution was drawn up by persons so careful of the rights of the citizen, no provision was made to guard them in this particular. It would seem from the nature of the government to be proper that no person should be put upon his trial but by an inquest of a jury of his county. In Great Britain the power to proceed by information is a great instrument in the hands of the government. The common law is in force here, and by it the attorney and solicitor general have authority to file informations in cases under felony. Perhaps the court would determine that the law not having been practised was become obsolete. But in revising the constitution it might be proper to provide for the case. The citizen would be safe enough under such officers as we now have, but at another time the case may be different. A person vexatiously proceeded against, though acquitted, might be greatly injured by being brought to trial when the interference of the grand jury would have prevented his

being publicly accused. He proceeded to state the probable reasons founded on some provincial laws to which he referred, why the provision was not made in the constitution, and to state more at large the reasons why it should be made now. He hoped the resolution would pass, but as he thought a further exception ought to be made, he moved to amend the resolution by adding the following, viz. :

And the cases of convicts in the State prison, against whom informations by law may be filed, for additional confinement to hard labor.

Mr. FAY of Cambridge said that one exception had been discovered, and it might be found that there ought to be others. He thought there would be no danger in giving the discretion to the Legislature to provide by law for informations in particular cases. He had no objection to the resolution on general principles, but he objected to depriving the Legislature of the power of authorizing this course of proceeding, in particular cases in which it might be found necessary. He wished, therefore, that the resolution might be further modified.

Mr. ABBOT of Westford said that the resolution would take away the power of justices of the peace to punish petty larcenies.

Mr. HUBBARD of Boston read a passage from a statute, granting certain powers to justices of the peace which he said were inconsistent with this resolution ; unless it was desirable to repeal the law the resolution ought not to be adopted as it was. It would take away the jurisdiction given to justices of the peace in the cases stated.

The amendment was agreed to—113 to 2.

The question was then stated on the resolution as amended.

Mr. FAY doubted the propriety of adopting the resolution as it stood. He thought they ought to have further time and to have it printed, or that it should be committed to a select committee. Half the house did not vote at all upon the amendment, because they did not understand the subject. He moved that the resolution should be passed over, and the other subjects under consideration of the committee taken up—agreed to.

The resolution submitted by Mr. PHELPS, proposing so to amend the constitution that the estate of ministers of the gospel shall not be exempt from taxation, provided it exceed one thousand dollars, was then taken up.

Mr. PHELPS of Chester said that he had not offered the proposition from any disrespect to the reverend clergy. He respected them as highly as any man. He thought it was not the intention of the people in forming the constitution to give the Legislature power to exempt any class of men from the payment of their share of taxes for the support of government. He quoted a passage from the constitution in support of this position. Many ministers within his knowledge were in point of property among the most independent men in society. They own large landed estate, and had large sums of money which they were letting out at interest on mortgages.

They enjoyed all the privileges of government and were entitled to be chosen to offices. They enjoyed great perquisites in having the right to marry—the fees of which were considerable. It was not a matter which he felt personally concerned in, but in some towns he was acquainted with, there were ministers who were among the most wealthy persons in town.

Mr. DANA moved to strike out the proviso. If there was any article on the subject he would not provide for any permanent exemption. But he would add a proviso in favor of ministers of the gospel already settled. It was but an act of justice to make such a proviso. But gentlemen afterwards settled in the ministry, if it was determined there should be no exemption, would take it into consideration in making their contracts with their parishes.

Mr. TILLINGHAST of Wrentham was in favor of the amendment. He hoped the proviso would be struck out and that the article would be agreed to without any further modification.

Mr. FREEMAN of Sandwich spoke to the same effect. He had heard, deaf as he was, great dissatisfaction expressed at their privileges enjoyed by the clergy, and particularly their exemption from taxation.

Mr. STURGIS of Boston hoped that neither the amendment nor the resolution would prevail. It was a subject very properly left to the Legislature. The resolution was not only aimed at clergymen, but all others who are exempted by the annual tax laws. He had been in the Legislature and on the committee for preparing the tax bill, and he had never found any disposition to exempt any persons from taxation, when the tax could be properly demanded. The argument of the gentleman from Chester would go against exempting any persons from military service. He thought that without going into the argument it was perfectly safe to leave it to the wisdom and discretion of the Legislature. He had such a respect for the clergy that he was not disposed to deprive them of any privilege which they were fairly entitled to.

Mr. BLAKE thought the resolution was altogether unnecessary. Every object of it was fully provided for by the constitution already. If any construction of the constitution gave a discretion to the Legislature to exempt from taxation this useful and respectable body of men, he would not abridge that discretion.

Mr. HORT of Deerfield was opposed to the amendment and to the resolution. The subject comes before the Legislature every year in the annual tax act. They will never act upon it without due consideration, and he would leave it entirely to their discretion. He had no doubt there were instances in which clergymen owned property which ought to be taxed.

Mr. PHELPS was opposed to striking out the proviso. He did not object to exempting a limited amount of property.

Mr. SLOCUM considered clergymen as an ornament to our society; they spread the gospel far and wide. He wanted they should have equal privileges and equal rights, but he did not want to have any privileged order.



Mr. HUBBARD was opposed to the amendment because he was opposed to the resolution. This subject had been for forty years matter of legislative provision. It was acted on every year. The ministers of the Commonwealth have been settled with the understanding that their property is not to be taxed. Their salaries have for that reason been fixed at a lower rate. If there were any of them who by great prudence and frugality had been able to lay up anything, he was glad of it.

Mr. WELLES of Boston said the constitution had provided general principles which were sufficient on this subject. He should be sorry to see this order of men introduced into the constitution, as subject to a particular provision. He thought both the proviso and resolution were entirely unnecessary. If the exemption should ever be found an evil, the Legislature would take measures to guard against it.

Mr. STURGIS stated the usual exemptions of the annual tax act. He thought that the proposition went further than the mover himself intended.

Mr. THORNDIKE thought the Legislature had full power, and that it would be beneath the dignity of the Convention to introduce anything into the constitution which should aim at this useful and respected class of men, either to take away any part of their privileges, or to hold them up to public odium.

Mr. TILLINGHAST had not heard anything that satisfied him that this provision ought not to be engrafted into the constitution. He objected not only to the exemption of clergymen, but to the property of colleges and property of all other descriptions. Harvard University had millions of property perhaps, and he thought it ought not to be exempt from its share of the public burthens.

Mr. SAVAGE had hoped that gentlemen had learned that the object of the Convention was to settle general principles and not details. The Legislature represents the sovereignty of the country. And we cannot undertake to limit every exercise of its discretion.

Mr. PAIGE of Hardwick thought if we would exercise a little plain common sense, we should throw the whole thing aside, both the amendment and the resolution.

The motion to amend was negatived, and the question on the resolution was decided in the negative—42 to 207.

The resolution submitted by Mr. BOYLSTON was then taken up.

Mr. BOYLSTON of Princeton said that his object was entirely in a commercial relation. It was intended to invite foreigners to come to our shores, by the offer of equal protection to men of all religious opinions. As the constitution now stands, the offer of protection was confined to persons of the Christian religion.

Mr. HUBBARD read the second article of the bill of rights which he thought made the most ample provision for the object.

Mr. J. DAVIS of Boston opposed the resolution. He thought it would be better to leave it to legislative discretion. Persons of all religions have in fact full and equal protection.

Mr. QUINCY objected to the resolution because it seemed to imply that persons of all religions were not now under the protection of the law. He showed on what grounds he thought the object was fully provided for.

The resolution was negatived.

On motion of Mr. FAY the committee rose, reported on the business that was finished, and asked leave to sit again on the resolution proposed by Mr. HINCKLEY.

On motion of Mr. HINCKLEY, the committee of the whole was discharged from the further consideration of the resolution, and it was committed to a select committee.

Messrs. HINCKLEY, FAY, and MORTON were appointed on the committee.

On motion of Mr. WEBSTER, the first resolution, relating to the declaration of rights, agreed to in committee of the whole, was assigned for half past nine o'clock, to-morrow.

Mr. PRINCE moved a resolution, providing that the constitution should be so altered, that in all prosecutions for libels, the party accused shall have a right to introduce evidence in support of his allegations, and the jurors in all cases of libel, shall have the right to decide on the law as well as on the fact.

Committed to the select committee above named.

Leave of absence was granted to Mr. CRANSTON of Marlborough.

A motion to adjourn to half past three this afternoon was negatived—107 to 55.

The Convention then went into committee of the whole on the resolution proposing to abolish the office of solicitor general; Mr. FAY of Cambridge in the chair.

Mr. DANA said it was not a great object with him to abolish this office. There might be employment found for it. But there was an expectation that the offices of government would be reduced. He thought there might be a different arrangement of the duties of the state offices. There should be an attorney general, whose duties should be defined by law. It should be a part of his duty to be at the seat of government, to advise the departments of government in matters of law. The constitution also required the office of county attorneys. He thought a part of the duties of government would be as well performed by officers of this description.

Mr. PARKER thought there were some circumstances which the mover of this resolution had not attended to. Though the office was provided for in the constitution of 1780, it was not supplied until twenty years after. It became then absolutely necessary. Great embarrassment would have arisen if the office could not have been established. It might possibly be dispensed with now, but it might become necessary hereafter. It was convenient, if not necessary now. The Legislature had made such an arrangement of the courts for the completion of business as to have two circuits going on at the same time. It was extremely convenient, and might sometimes be very important, that one of the law officers should attend

these circuits. Much was saved to the community by the attention, perseverance and ability of the gentlemen who perform these duties. County attorneys, though commonly competent, had no inducement to pay that attention to the business which ought to be paid. Much was saved by having two circuits, and by having a responsible officer attend the courts.

Mr. FREEMAN of Sandwich expressed his concurrence in the views of Mr. PARKER, and gave some additional reasons against the resolution.

Mr. HYDE moved that the committee rise. He thought it too important a subject to be acted on in so thin a House.

The motion was negatived.

Mr. WARD spoke against the resolution. He stated some reasons for retaining the office not before mentioned.

Mr. DANA spoke again in support of the resolution.

The question was then taken and the resolution agreed to—98 to 71.

The committee rose, and reported their agreement to the resolution, which was laid on the table,

And the House adjourned.

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#### FRIDAY, DECEMBER 30.

The House met at half past 9 o'clock, and attended prayers offered by Rev. Mr. Palfrey. The journal of yesterday was then read.

Mr. FISHER of Lancaster was appointed a monitor in the room of Mr. VALENTINE, who was absent on leave.

On motion of Mr. DANA, the House went into committee of the whole on the reports of the select committee on the judiciary power; Mr. MORTON in the chair.

The committee went into consideration of the first resolution of the select committee, which proposes to alter the constitution so that judicial officers shall be removable by the governor and council, upon the address of two-thirds (instead of a majority) of each branch of the Legislature; and also that the Legislature shall have power to create a supreme court of equity, and a court of appeals.

Mr. KEYES of Concord opposed the first part of the resolution, on the ground that the change was unnecessary. He said no evil had arisen from the present provision, and there was no danger to be apprehended from trusting to a majority of each branch of the Legislature.

Mr. RANTOUL of Beverly moved that the committee rise, and ask leave to be discharged from the further consideration of the report of the select committee.

Mr. PICKMAN of Salem objected to the committee's asking to be discharged. The select committee, the chairman especially, who was absent, had bestowed a great deal of time and care in

making up this report, and it would not be treating them with respect to refuse it any discussion. He said the provision in the Constitution respecting the removal of judicial officers, had been complained of, as rendering the judges too dependent upon the Legislature. It was proper to have a provision of a similar nature, to meet cases that were not the proper subject of impeachment, such as incapacity from natural infirmities; and he thought that requiring the consent of two-thirds of each branch of the Legislature, would secure the public in cases of manifest incapacity of this kind, and at the same time give greater independence to the judges.

Mr. DANA said the report generally was not a favorite with him; but there was one resolution in it which he wished might be adopted, to prevent the judges of the supreme court being called upon by the governor, &c., to answer questions. He felt that the State was a million of dollars poorer for the provision of the constitution on this subject. The departments of government should be kept distinct, and act on their own responsibility. Judges should not be obliged to give opinions without hearing arguments. On account of this resolution, he was opposed to the committee's requesting to be discharged.

The question for rising was put, and decided in the negative.

The question recurred on the first resolution.

Mr. RICHARDSON of Hingham opposed the resolution. It was contrary to the principles of our government to require the concurrence of more than a majority. If two-thirds of each house was required to remove a judge, it could never be done, if he were ever so corrupt. The judges of the courts of the United States might be impeached; but, by this resolution, however imperious the demand for the removal of our judges, it would be next to impossible.

Mr. AUSTIN of Boston moved to amend the resolution by striking out all the words after *resolved*, and inserting that it was inexpedient to make any alteration or amendment in that part of the constitution that relates to the judiciary.

Mr. AUSTIN stated some reasons for his amendment.

Mr. TRASK of Brimfield opposed the amendment. It was considered a defect in our constitution, that our judges were left exposed to the caprice of the Legislature, on any popular commotion, and it ought to be remedied.

The CHAIRMAN said the motion of the gentleman was out of order, as its effect would be to strike out all the other resolutions of the report.

Mr. AUSTIN appealed, and the committee determined that the decision of the chair was not correct—106 to 109.

Mr. BLAKE said he thought it would be no more than civility towards the gentleman from Salem, the chairman of the select committee, to postpone the consideration of this subject. He therefore moved that the committee rise. Negatived.

Messrs. VARNUM and J. PHILLIPS made some remarks respecting

the effect of Mr. AUSTIN's amendment on the mode of considering the resolutions in the report. Mr. P. proceeded to say, that he was on the select committee; that various propositions respecting the removal of judges were offered in the committee, to which objections were made, and that the present proposition was a matter of compromise. It was agreed that giving to two-thirds of both branches of the Legislature the power to address the governor, would effect the object whenever there should be such prominent cause for a removal as should satisfy the whole public.

Mr. MITCHELL of Bridgewater wished the question to be divided. The question then was upon striking out.

Mr. PICKMAN made a motion to rise. Negatived—95 to 197.

Mr. HUBBARD of Boston said he was unwilling to have this subject discussed in the absence of the chairman of the select committee, but as gentlemen seemed determined to act upon the resolution, he could not consent to give a silent vote, though he did not expect by his arguments to change the opinions of any one. He considered the first branch of the first resolution to be of great importance. The argument from the experience of forty years, being founded on the powers of the present constitution not having been abused, was not a fair one. The constitution was defective in not sufficiently securing the independence of the judges. He asked if a judge was free, when the Legislature might have him removed whenever it pleased? What would be said of the freedom of the Legislature, if the judges had the power to dissolve it at pleasure? The tenure of office of judges was said to be during good behavior. Was this the case when the Legislature might deprive them of their office, although they had committed no crime. Sufficient provision was made in the case of misconduct in the power of impeachment. The constitution of the United States had been made since our own, and contained no such provision as this. Was there ever any complaint on this account? On the contrary, was there not the greatest respect and confidence reposed in the judges of the supreme court of the United States. This provision was not reconcilable with the twenty-ninth article of the declaration of rights, which says that it is for the security of the rights of the people that the judges of the supreme court should hold their offices as long as they behave themselves well. He wished there might be no clause repugnant to the spirit of the constitution. On the plan proposed for the organization of the house of representatives, the judges would be removable by a majority of representatives of a little more than half of the people. No justice of the peace was allowed to be deprived of his office without a hearing, but here the judges of the highest court might be dismissed without an opportunity of saying a word in their defence. The object of the resolution was not to restrain the rights of the people, but to restrain the powers of the Legislature. It was to secure the rights of the people. Connecticut had grown wiser, and had changed their mode of constituting their judiciary, and had

adopted the provision now proposed. The effect of a different course would be to make judges political men. They would be judges one day, and legislators the next. There ought to be no limit to the tenure of office, so long as a judge behaves himself well, unless perhaps in regard to age; but in that case his salary, or part of it at least, ought to be continued. With regard to the next branch of the resolution, he said the only object of it was to give the Legislature power to create an independent court of chancery. The question was not whether it was wise to establish such a court, but only to give the Legislature the power, if circumstances shall render it proper and expedient. The same remark would apply to the next branch of the resolution, respecting a court of appeals.

Mr. WEBSTER wished to divide the question for striking out. He moved to strike out all but the first branch of the resolution. He did not mean to be understood as objecting to the provision in the part he proposed to strike out.

Mr. SAVAGE of Boston said he hoped we should have as good provisions in our constitution as there were in the constitution of the United States. He hoped we should have better—that we should have the advantage of both modes of removal from office, by impeachment, and upon an address of the Legislature, so as to meet the moral disqualifications and the natural disqualifications for office. It had been our misfortune, in this part of the country, to have a judge impeached in the senate of the United States for crime, and he was afraid his memory served him but too well when he said that the senate declared him guilty, when he was guilty only of insanity. He said a provision like that in our constitution would be less dangerous in the constitution of the United States. The judges would not be generally known to the members of Congress, and the popular passions of so great a body as the whole United States would not be everywhere excited at the same time. There was no security that a judge would decide a law to be unconstitutional, when the same Legislature perhaps which passed the law, may remove him. It ought not to be in the power of the Legislature to address for any offence. The accused ought to be heard in his defence.

Mr. SHAW called the attention of the committee to the object of the provision in the constitution, and the time when it was introduced. It is laid down as a general principle in the declaration of rights, that the powers of government should be vested in distinct branches—that the legislative, executive and judiciary departments respectively, shall not exercise the powers of either of the others, and that it is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit. The independence of one department of the government upon the other has been considered one of the most important political improvements of modern times. This principle is set forth with great force in the Defence of the American Constitution. It has been adopted

by all enlightened governments in the world. The judges are made independent of the crown and of the people. Is this done in our constitution? Although they hold the office nominally by the tenure of good behavior, if in another part you say they shall hold it at the will of the other branch, you make them dependent, and the first clause becomes nugatory. This constitution was formed as early as 1780. It was one of the first in the country—it was but an experiment. Great Britain was looked to as an example. How was this provision introduced into practice in Great Britain? It was not to make them independent of the people, but to make them independent of the crown. It was therefore considered a great triumph of the people, as securing their independence of the crown. The general principle was, that they should be independent of the other persons during good behavior. What is meant by good behavior? The faithful discharge of the duties of the office. If not faithful they were liable to trial by impeachments. But cases might arise when it might be desirable to remove a judge from office for other causes. He may become incapable of performing the duties of the office without fault. He may lose his reason, or be otherwise incapacitated. It is the theory of our government that no man shall receive the emoluments of office, without performing the services, though he is incapacitated by the providence of God. It is necessary therefore that there should be provision for this case. But in cases when it applies, the reason will be so manifest as to command a general assent. It must be known so as to admit no doubt, if a judge has lost his reason, or become incapable of performing his duties. As it does not imply misbehavior, if the reason cannot be made manifest so as to command the assent of a great majority of the Legislature, of two-thirds at least, there can be no necessity for the removal. By the constitution as it stands, the judges hold their offices at the will of the majority of the Legislature. He confessed with pride and pleasure that the power had not been abused. But it was capable of being abused. If so it ought to be guarded against. That could be done by requiring the voice of two-thirds of each branch of the Legislature. If unfortunately it should happen that this power should be resorted to for purposes which the constitution did not intend—to gratify the wishes of a party, it would put at risk the security of life, liberty and property, intended to be guarded by the independence of the judiciary. Suppose a party, from a temporary triumph, should remove judges when the justice of it is not manifest, and the party which makes the removal should be put down. Their successors in power would say it was an act of justice to restore those who were put out of office. In such case the whole judiciary system would necessarily, after one or two changes, be put entirely at the will of the prevailing party. He hoped the Convention would adopt the remedy which was proposed, and which would leave the power of removal to be exercised in cases where it ought to be, and in no other.

Mr. FREEMAN of Sandwich would have been in favor of the whole resolution if that part of it relating to the power of establishing a supreme court of chancery, and court of appeals, had not been struck out. He should have liked this clause as well if the committee had proposed to limit the power of the governor and council to remove judges on the address of the two branches of the Legislature to specific cases, such as insanity or disability. But he was willing to adopt the resolution now reported. The judges were not now independent of the other departments of government. It was our duty to look beyond the present moment, and provide for cases easily imagined, where some security would be necessary.

Mr. PRESCOTT of Boston was sensible of the impatience of the committee, but he felt it his duty not to let the subject pass without giving his voice in support of the resolution. He had long considered this provision one of the most important that could be introduced into the constitution. He rejoiced to say that during the experience of forty years the different branches had remained independent of each other, but they were bound to see whether their independence was sufficiently secured. Was the executive department independent of the other two? Was the judiciary independent of the legislative and the executive, or both united? It was as much to be protected from a combination of two, as from any one. They were bound to see which department was the most feeble. No argument was necessary to show that if all were combined in one body, the danger would be great. If two were united they would be formidable. How was it in the other departments? The executive is removable only for misconduct. The members of the Legislature hold by the same tenure, and these are all officers chosen by the people. Is the judiciary as well protected? It is as important as any department. The rights of all are dependent on it. They have besides an odious duty to perform. They have to decide controversies between individuals, by which one party or the other must be offended, because one must lose. They have no conciliatory duties to perform; it is therefore necessary that they should be supported by the constitution. What security have they by the constitution? They hold their offices as long as they behave well and no longer. They are impeached when guilty of misconduct. It is the duty of the house of representatives, constituting the grand inquest of the Commonwealth, to make inquiry—for the senate to try, and if guilty to remove them from office. There may be other cases in which they ought to be removed when not guilty of misconduct in office, but for infirmity. Provision is made for these cases, that the two branches of the Legislature concurring with the governor and council, may remove judges from office. He did not object to this provision if it was restrained so as to preserve the independence of the judges. They should be independent of the Legislature and of the governor and council. But now there is no security. The two other departments may remove them without inquiry—without putting any reason on record. It is in their pow-



er to say that the judges shall no longer hold their offices, and that others more agreeable shall be put in their places. He asked, was this independence? If it was not, the constitution did not secure it. It was not for the present time that it was necessary. Perhaps the experience of the past had not shown the want of it. It was enough to show that the security of every person who has rights may at some future day be dependent on it. It was not taking power from the people, it was apportioning and balancing the power of the servants of the people. Would any one, looking back on the past, say that we should not have times of great turbulence—factionous leaders, who will have projects injurious to the true interests of the community? Let such leaders, high in popular favor, carry their measures through the Legislature—the executive will partake of the same feeling. Let us have a firm judiciary, and they will say that these laws if they encroach upon the rights of the citizen, are unconstitutional. What will be the consequence? With such a Legislature, are we not to expect they will agree in an address for the removal of the judges who thwart their measures—that they will meet the concurrence of the chief magistrate, and that other men will be found to supply their places who will put such a construction on the laws as they wish. The constitution secures the freedom of the press. But this is an instrument troublesome to demagogues in power, and they might make laws to destroy it. An upright judge would declare such a law to be unconstitutional, and for such a performance of his duty, he would be put down by the party in power, and another put in his place who would be more compliant. He might suppose more probable and more important cases even than this. He therefore wished some further security for the independence of the judge. The constitution of the United States has wisely provided it. The mode of removal by address was introduced into the British government for the purpose of restraining the power of the crown, but into ours for another purpose—to provide for a case which could not properly be reached by the power of impeachment. But it ought to be provided for in a manner consistent with the independence which the constitution in another part of it demands. The limitation proposed in the exercise of this power is not a novelty. It is found in most of the state constitutions. In four out of five of them the judges are not removable from office but on the address of two-thirds of both branches of the Legislature.

Mr. D. DAVIS of Boston thought it absolutely necessary that there should be some modification of the power of removal granted by the constitution. It was the only instance of any government of law or liberty where a man was liable to be tried, condemned and punished unheard and unseen. The constitution contemplates removal of judges from office for two causes only. For crime, by impeachment on the grand inquest by the representatives—and for being disqualified to perform the duties of the office by the visitation of God. He had known of but one instance of the removal of a judge for this last reason, and he believed it was the general opinion that

in that instance, the Legislature would have done better, if they had waited on Providence a little longer. The power of removal by address, which was intended to apply only to cases of disqualification by the visitation of God, in fact extended much farther, and was liable to be abused. It was a defect which ought to be remedied. We had the example of the regenerated and republican state of Connecticut. They had had the experience of a dependent judiciary—and in recently establishing their constitution they had adopted the same limitation of the power of removal which was proposed here. If the resolution were before the committee in a form which admitted of amendment, he would propose to alter it in such manner that the officer to be removed should have a right to be heard. No reason need now be given for the removal of a judge, but that the Legislature do not like him. It was no light thing that an office holden on the tenure of good behavior, may be taken away with the loss of character which it naturally involves, and the person removed not even know the reason of it.

Mr. STARKWEATHER of Worthington had been in favor of the motion for striking out the whole resolution, because he was not sensible that it was capable of division, for he would rather lose the whole than adopt the whole. But it being divided he was entirely in favor of retaining the first section, and hoped it would not be struck out. All the state constitutions but two contained this limitation of the power of removal.

Mr. CHILDS of Pittsfield said that before they agreed to adopt this resolution, it ought to be shown that there was a necessity for it. This had not been shown, but on the contrary our judiciary system had justly been the boast of the State. It was in violation of an important principle of the government that the majority of the Legislature, together with the governor, should not have the power of removal from office. This power was in accordance with the principle of the bill of rights. It was imperative in the advocates of this resolution to show that it was necessary to intrench this department of the government for its security. They had not shown it; on the contrary we were in the full tide of successful experiment. The founders of the constitution intended to put the judiciary on the footing of the fullest independence consistent with their responsibility. As a proof that they had done this he appealed to the character of our judiciary. Who knew what would be the effect if they were to obtain any further independence.

Mr. CUMMINGS of Salem rose to give the reasons why he objected to the report of the select committee, of which he had been a member. He considered that part of the constitution as perfect. He had heard to-day, with surprise, for the first time, that judges were not considered sufficiently independent. In the experience of forty years we had never found out that they were not independent. Were they not, for all the purposes of their judicial functions, so far as they do right, fully independent? We had been referred to other states—but our government was differently constituted from those

of the states alluded to. In those states there is no council. In this State they cannot be removed on address of the Legislature, but with the consent of the council. Was not this a sufficient guard? Another part of the constitution protects them when accused of crimes. This provision is not intended to embrace cases of crime—it is only for cases when they become incompetent to discharge their duties. May not the people, by a majority, determine whether judges are incompetent? We came to amend the constitution, not to make one. If no inconvenience has been found in this part, we ought not to alter it. He did not think that the proposed amendment would make the judges more independent; it would make the people jealous of them. We have the experience of forty years that they are so, and the evidence of the framers that they thought they were so; because, in the constitution that contains this provision, they said that they ought to be independent.

Mr. LINCOLN was not fearful of being charged with being a demagogue, or with advocating a measure that should be suspected to favor demagogues, if he opposed this amendment. He was entirely satisfied with the constitution as it was. He had never heard till now, and was now surprised to hear, that there was any want of independence in the judiciary. He had heard it spoken of in charges, sermons, and discourses in the streets, as one of the most valuable features of the constitution—that it established an independent judiciary. He inquired was it dependent on the Legislature? It was not on the Legislature nor on the executive. No judge could be removed but by the concurrent act of four coördinate branches of the government—the house of representatives, the senate, with a different organization from the house, the governor, and the council. Was it to be supposed that all these should conspire together to remove a useful judge? But it was argued that future Legislatures might be corrupt. This was a monstrous supposition. He would rather suppose that a judge might be corrupt. It was more natural that a single person should be corrupt than a numerous body. The proposed amendment was said to be similar to provisions of other governments. There was no analogy—because other governments are not constituted like ours. It was said that judges have estates in their offices—he did not agree to this doctrine. The office was not made for the judge, nor the judge for the office; but both for the people. There was another tenure—the confidence of the people. It was that which had hitherto occurred here. Have we then less reason to confide in posterity, than our ancestors had to confide in us?

Mr. WEBSTER submitted whether time should not be given until morning, that the chairman of the select committee, who had been detained by illness, and who was expected to-morrow, might be present to take a share in the debate, especially as the usual hour of adjournment had arrived, and as they could not go through the report, he moved that the committee rise. The motion was negatived—121 to 214.

Mr. FREEMAN of Sandwich wished to present some views, different from what had been given. He said he had a right to speak of times that were past, and of Legislatures that had been. We had seen a disposition in Legislatures to exercise their power over courts, for party purposes. The old courts of common pleas were abolished and the circuit courts established in their place. He believed the change a good one, but asked were there not other motives than the furtherance of public justice, for which this change was made. He referred to the changes in the courts of sessions. He gave other reasons founded on the history of the past, for believing that the time would come when, if the resolution was not adopted, judges would be removed for party purposes.

Mr. SLOCUM said that the resolution did not go far enough. It was a bad rule that did not go both ways. If it required two thirds of the council to make an appointment he should be satisfied.

Mr. WEBSTER rose to address the chair, but yielded to a motion for the committee to rise, which was negatived—128 to 213.

Mr. HOLMES of Rochester said that the government of the Commonwealth was composed of three distinct branches. The executive, legislative and judiciary. The Convention had expressed their unanimous opinion, that these ought to be kept distinct and independent. But those who have opposed the report contended, that the judiciary is at present independent of the executive and legislative departments both together. If he thought so, he should not have troubled the committee with any remarks. It seemed to him impossible, that it should not, on a moment's consideration, appear otherwise. It was a kind of independence he had no idea of. That they could not be removed by either the representatives, or the senate, or the executive, was true; but that they could be removed by all united, was as true. What was the council but a creature of the two branches? When the two branches of the General Court vote to sweep the bench of the supreme court, would not the council be sure to concur? Those bodies were so nearly connected, that they would generally act in concurrence. When a judicial officer has been guilty of mal-administration, he will be removed by impeachment. When it was necessary to remove a judge for any other cause, he thought that two thirds of both branches would always concur in the removal. He was, therefore, in favor of the report.

Mr. DEARBORN of Roxbury renewed the motion for the committee to rise. Negatived—133 to 176.

Mr. WEBSTER. Regrets are vain for what is past, yet I hardly know how it has been thought to be a regular course of proceeding, to go into committee on this subject, before taking up the several propositions which now await their final readings on the President's table. The consequence is that this question comes on by surprise. The chairman of the select committee is not present—many of the most distinguished members of the Convention are personally so situated as not to be willing to take part in the debate,

—and the first law officer of the government, a member of the committee, happens at this moment to be in a place (the chair of the committee of the whole) which deprives us of the benefit of his observations. Under these circumstances, I had hoped the committee would rise. It has, however, been determined otherwise, and I must therefore beg their indulgence while I make a few observations. As the constitution now stands, all judges are liable to be removed from office by the governor, with the consent of the council, on the address of the two houses of the Legislature. It is not made necessary that the two houses should give any reasons for their address, or that the judge should have an opportunity to be heard. I look upon this as against common right, as well as repugnant to the general principles of the government. The commission of the judge purports to be, on the face of it, during good behavior. He has an interest in his office. To give an authority to the Legislature to deprive him of this, without trial or accusation, is manifestly to place the judges at the pleasure of the Legislature. The question is not what the Legislature probably will do, but what they may do. If the judges, in fact, hold their offices only so long as the Legislature see fit, then it is vain and illusory to say that the judges are independent men, incapable of being influenced by hope or by fear; but the tenure of their office is not independent. The general theory and principle of the government is broken in upon, by giving the Legislature this power. The departments of government are not equal, co-ordinate and independent, while one is thus at the mercy of the others. What would be said of a proposition to authorize the governor or judges to remove a senator or member of the house of representatives from office? And yet the general theory of the constitution is to make the judges as independent as members of the Legislature. I know not whether a greater improvement has been made in government than to separate the judiciary from the executive and legislative branches, and to provide for the decision of private rights, in a manner wholly uninfluenced by reasons of state, or considerations of party or of policy. It is the glory of the British constitution to have led in the establishment of this most important principle. It did not exist in England, before the revolution of 1688, and its introduction has seemed to give a new character to the tribunals. It is not necessary to state the evils which had been experienced, in that country, from dependent and time-serving judges. In matters of mere property, in causes of no political or public bearing, they might perhaps be safely trusted; but in great questions concerning public liberty, or the rights of the subject, they were, in too many cases, not fit to be trusted at all. Who would now quote Scroggs, or Saunders, or Jeffries, on a question concerning the right of the habeas corpus, or the right of suffrage, or the liberty of the press, or any other subject closely connected with political freedom? Yet on all these subjects, the sentiments of the English judges, since the revolution, of Somers, Holt, Treby, Jekyl, &c., are, in general, favorable to civil liberty.

and receive and deserve great attention, whenever referred to. Indeed, Massachusetts herself knows, by her own history, what is to be expected from dependent judges. Her own charter was declared forfeited without a hearing, in a court where such judges sat. When Charles the Second, and his brother after him, attempted the destruction of chartered rights, both in the kingdom and out of it, the *mode* was, by judgments obtained in the courts. It is well known that after the prosecution against the city of London was commenced, and while it was pending, the judges were changed, and Saunders, who had been consulted on the occasion, and had advised the proceeding on the part of the crown, was made chief justice for the very purpose of giving a judgment in favor of the crown; his predecessor being removed to make room for him. Since the revolution of 1688, an entire new character has been given to English judicature. The judges have been made independent, and the benefit has been widely and deeply felt. A similar improvement seems to have made its way in Scotland. Before the union of the kingdoms it cannot be said that there was any judicial independence in Scotland, and the highest names in Scottish jurisprudence have been charged with being under influences which could not, in modern times, be endured. It is even said, that the practice of entails did not extensively exist in Scotland, till about the time of the reigns of the last princes of the Stuart race, and was then introduced to guard against unjust forfeitures. It is strange indeed, that this should happen at so late a period, and that a most unnatural and artificial state of property should be owing to the fear of dependent judicatures. I might add here, that the *heritable jurisdictions*, the greatest almost of all evils, were not abolished in Scotland, till about the middle of the last century; so slowly does improvement make progress when opposed by ignorance, prejudice or interest. In our own country, it was for years a topic of complaint, before the revolution, that justice was administered, in some of the colonies, by judges dependent on the British crown. The Declaration of Independence itself puts forth this as a prominent grievance, among those which justified the revolution. The British king, it declares, "had made judges dependent on his own will alone for the tenure of their offices." It was therefore to be expected, that in establishing their own governments, this important point of the independence of the judicial power would be regarded by the states. Some of them have made greater, and others less provision on this subject; the more recent constitutions, I believe, being generally framed with the most and best guards for judicial independence. Those who oppose any additional security for the tenure of judicial office, have pressed to know what evil has been experienced—what injury has arisen from the constitution as it is. Perhaps none;—but if evils probably may arise, the question is, whether the subject be not so important as to render it prudent to guard against that evil. If evil do arise, we may be sure it will be a great evil; if this power should happen to be abused, it would.

be most mischievous in its consequences. It is not a sufficient answer to say, that we have, as yet, felt no inconvenience. We are bound to look to probable future events. We have, too, the experience of other states. Connecticut, having had judges appointed annually, from the time of Charles the Second, in the recent alteration of her constitution, has provided that hereafter they shall hold their office during good behavior, subject to removal on the address of *two thirds* of each house of the legislature. In Pennsylvania, the judges may be removed, "for any reasonable cause," on the address of *two thirds* of the two houses. In some of the states *three fourths* of each house is required. The new constitution of Maine has a provision, with which I should be content; which is, that no judge shall be liable to be removed by the legislature till the matter of his accusation has been made known to him, and he has had an opportunity of being heard in his defence. This seems no more than common justice; and yet it is much greater than any security which at present exists in the constitution of this Commonwealth. It will be found, if I mistake not, that there are not more than two or three, out of all the states, which have left the tenure of judicial office at the entire pleasure of the legislature. It cannot be denied, that one great object of written constitutions is to keep the departments of government as distinct as possible; and for this purpose to impose restraints. And it is equally true, that there is no department on which it is more necessary to impose restraints than the Legislature. The tendency of things is almost always to augment the power of that department, in its relation to the judiciary. The judiciary is composed of few persons, and those not such as mix habitually in the pursuits and objects which most engage public men. They are not, or never should be, political men. They have often unpleasant duties to perform, and their conduct is often liable to be canvassed and censured, where their reasons for it are not known, or cannot be understood. The Legislature holds the public purse. It fixes the compensation of all other departments—it applies, as well as raises, all revenue. It is a numerous body, and necessarily carries along with it a great force of public opinion. Its members are public men, in constant contact with one another, and with their constituents. It would seem to be plain enough, that without constitutional provisions which should be fixed and certain, such a department, in case of excitement, would be able to encroach on the judiciary. Therefore is it that a security of judicial independence becomes necessary; and the question is whether that independence be at present sufficiently secured. The constitution being the supreme law, it follows, of course, that every act of the Legislature, contrary to that law, must be void. But who shall decide this question? Shall the Legislature itself decide it? If so, then the constitution ceases to be a *legal* and becomes only a *moral* restraint on the Legislature. If they, and they only, are to judge whether their acts be conformable to the constitution, then the constitution is *admonitory* or *ad-*

*visory* only, not legally binding ; because if the *construction* of it rests wholly with them, their *discretion*, in particular cases, may be in favor of very erroneous and dangerous constructions. Hence the courts of law necessarily, when the case arises, must decide upon the validity of particular acts. These cases are rare, at least in this Commonwealth ; but they would probably be less so, if the power of the judiciary in this respect were less respectable than it is. It is the theory and plan of the constitution to restrain the Legislature, as well as other departments, and to subject their acts to judicial decision, whenever it appears that such acts infringe constitutional limits—and without this check, no certain limitation could exist on the exercise of legislative power. The constitution, for example, declares, that the Legislature shall not suspend the benefit of the writ of *habeas corpus*, except under certain limitations. If a law should happen to be passed, restraining personal liberty, and an individual, feeling oppressed by it, should apply for his *habeas corpus*, must not the judges decide what is the benefit of *habeas corpus*, intended by the constitution ; what it is to *suspend it*, and whether the act of the Legislature do, in the given case, conform to the constitution ? All these questions would of course arise. The judge is bound by his oath to decide according to law. The constitution is the supreme law. Any act of the Legislature, therefore, inconsistent with that supreme law, must yield to it ; and any judge, seeing this inconsistency, and yet giving effect to the law, would violate both his duty and his oath. But it is evident that this power, to be useful, must be lodged in independent hands. If the Legislature may remove judges at pleasure, assigning no cause for such removal, of course it is not to be expected that they would often find decisions against the constitutionality of their own acts. If the Legislature should, unhappily, be in a temper to do a violent thing, it would probably take care to see that the bench of justice was so constituted as to agree with it, in opinion. It is unpleasant to allude to other states, for negative examples ; yet if any one were inclined to the inquiry, it might be found, that cases had happened, in which laws known to be, at best, very questionable, as to their consistency with the constitution, had been passed, and at the same session, effectual measures taken, under the power of removal by address, to create a new bench. Such a coincidence might be accidental ; but the happening of such accidents often would destroy the balance of free governments. The history of all the states, I believe, shows the necessity of settled limits to legislative power. There are reasons, entirely consistent with upright and patriotic motives, which nevertheless evince the danger of legislative encroachments. The subject is fully treated by Mr. Madison, in some numbers of the *Federalist*, which well deserve the consideration of the Convention.

There is nothing after all so important to individuals as the upright administration of justice. This comes home to every man ; life, liberty, reputation, property, all depend on this. No govern-



ment does its duty to the people, which does not make ample and stable provision for the exercise of this part of its powers. Nor is it enough that there are courts which will deal justly with mere private questions. We look to the judicial tribunal for protection against illegal or unconstitutional acts, from whatever quarter they may proceed. The courts of law, independent judges, and enlightened juries, are citadels of popular liberty, as well as temples of private justice. The most essential rights connected with political liberty, are there canvassed, discussed, and maintained; and if it should at any time so happen, that these rights should be invaded, there is no remedy but a reliance on the courts to protect and vindicate them. There is danger also, that legislative bodies will sometimes pass laws interfering with other private rights, besides those connected with political liberty. Individuals are too apt to apply to the legislative power to interfere with private cases, or private property; and such applications sometimes meet with favor and support. There would be no security, if these interferences were not subject to some subsequent constitutional revision, where all parties could be heard, and justice administered according to standing laws. These considerations are among those, which, in my opinion, render an independent judiciary equally essential to the preservation of private rights and public liberty. I lament the necessity of deciding this question at the present moment; and should hope, if such immediate decision were not demanded, that some modification of this report might prove acceptable to the committee, since, in my judgment, some provision beyond what exists in the present constitution, is necessary.

The question was taken on striking out, and decided in the affirmative, 210 to 105.

Mr. WEBSTER gave notice that he should move to insert, in place of the clause struck out, a provision that judicial officers should not be removed on address, until the causes of removal were stated, and such officers heard in their defence.

A motion was made that the committee rise and report progress, which was agreed to.

Mr. WEBSTER moved that the Convention should go into committee of the whole on this subject, on Monday next. Negatived, 93 to 124.

It was then agreed to go into committee on this subject, tomorrow, at 11 o'clock.

At half-past 3 in the afternoon, the House adjourned.

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#### SATURDAY, DECEMBER 30.

The House met at half-past 9 o'clock, and the journal of yesterday was read.

Mr. PRINCE of Boston offered a resolution respecting the removal of judicial officers, which was referred to the committee of the

whole on the judiciary, and was afterwards acted upon by that committee.

The resolution offered by Mr. DANA, for abolishing the office of solicitor general, as soon as it should become vacant, was taken up, as reported by a committee of the whole.

Mr. S. PORTER of Hadley was opposed to taking away from the Legislature the power of creating an officer of this kind in future, if circumstances should make it necessary.

Mr. FREEMAN of Sandwich said he had no objection to the office being abolished, when the Legislature should think proper to pass an act for that purpose, but he would not deprive the Legislature of the power of creating it again, if it should become necessary to have such an officer. He considered that this would be the effect of the present resolution, and likewise that the tenure of the office would be altered, so as to give the present incumbent a life estate in it.

Mr. DANA said he had no desire to diminish the number of offices so far as concerned the benefit to be derived by incumbents, but he thought this one unnecessary, and that he should not discharge his duty to his constituents, without making an attempt to have it abolished. He thought that the county attorneys, living near the spot where an offence should be committed, would be able to prepare the cause better than the solicitor general, living at fifty miles distance, and the State would be saved an annual expense of \$2000. That, although the office remained vacant for twenty years after the adoption of the constitution, yet as we had been accustomed to see it filled, the governor and council would be troubled with solicitations for the appointment after the office became vacant, although the office had now ceased to be necessary. The best way, therefore, was to abolish it.

Mr. QUINCY said the office was created by the Legislature and not by the constitution—and the governor could no longer appoint, if the statute should be repealed. The operation of this resolution would prevent the Legislature, in all future time, from creating this office. The provisions in the constitution were intended to apply, whenever the Legislature should think it proper that the office should exist.

Mr. RANTOUL of Beverly said he should have no objection to the office being dispensed with, whenever the arrangement of the terms of the courts should permit. The Legislature could judge of this, and they had the power to pass an act for dispensing with the office. This resolution would put it out of their power during the life of the present incumbent, and would prevent their establishing the office in future, when circumstances might make it necessary. The consequence would be, that we should have two such officers as the attorney and solicitor general, but the latter under a different name.

Mr. WALTER of Boston saw no force in the reasons which had been urged for retaining the office, and he thought it ought to be abolished.

Mr. SULLIVAN of Boston said that formerly all the judges of the supreme court sat together on all trials, and the attorney general could always attend them. This was the reason that for twenty years after the adoption of the constitution, there had been no solicitor general. He was one of the committee of the Legislature which thought one judge was sufficient to try questions of fact, and a different organization of the court took place. After the alteration was adopted, it became necessary to have the different judges hold courts in different counties at the same time. Each of these judges had jurisdiction of all important offences which were not capital, and it was proper that an able lawyer should attend them to take care of the interests of the Commonwealth. What, he asked, makes a lawyer? Not merely reading law books; but reading, accompanied with the extensive practice in courts; and for a public prosecution, practice in the criminal branch of the law. This was not like the business of lawyers generally, which commonly relates to cases of property; it was a distinct profession. County attorneys could not be so well qualified for public prosecutions, as those who were engaged in a greater variety of criminal cases than one county afforded. The duties of the attorney and solicitor general, he had reason to know, were very important and very laborious. They had a great deal to do in examining the accounts of witnesses and other persons, in order to prevent them from fleecing the Commonwealth. Thousands of dollars were saved to the State by these officers, sums far beyond the amount of their salaries. He thought the office of solicitor general necessary; but if not, there was no reason for taking away from the Legislature the power to create or abolish the office, as circumstances should require. He would mention another thing. He had noticed that laws were frequently passed by the Legislature, in a form which reflected disgrace upon the Commonwealth. There ought to be some accurate lawyer appointed, with a salary, to revise them before they are promulgated. He thought that the two law officers of the government might perform this duty, and that they might also be useful in giving opinions to the Legislature in relation to laws proposed to be passed. He said it would be invidious to abolish a particular office; and to say that it should continue for the life of the present incumbent, would have an unpleasant aspect, which he thought the honorable mover of the resolution would choose to avoid.

The question was taken for the resolution passing to a second reading, and decided in the negative—124 to 129.

Leave of absence was granted to Mr. LYMAN of Goshen.

It was proposed to give a first reading to the resolutions reported by the committee of the whole, on the declaration of rights.

Mr. NICHOLS hoped it would be postponed till Tuesday, in order that there might be a fuller House, as the gentleman from Pittsfield intended to renew his proposition, for the purpose of taking the yeas and nays upon it. No vote was taken on the subject.

**Judiciary Power.**—The Convention then went into committee of the whole, on the unfinished business of yesterday, viz., the report of the select committee on that part of the constitution relating to the judiciary: Mr. MORTON in the chair.

The question was stated on the adoption of the other part of Mr. AUSTIN's motion, viz., to insert in the place of the part of the resolution struck out, a resolution that it is not expedient to make any further amendment in the part of the constitution relating to the judiciary.

Mr. WEBSTER moved to amend the amendment in conformity with the resolution offered by Mr. PRINCE, by striking out all after the word *resolved*, and inserting

That it is expedient so to amend the constitution as to provide that no address for the removal of any judicial officer, shall pass either house of the General Court, until the causes of removal are first stated, and entered on the journal of the house in which it originated, and a copy thereof served on the person in office, that he may be admitted to a hearing in his defence.

Mr. DANA thought this was an amendment founded in substantial justice, and that it would strike the minds of every gentleman agreeably.

The amendment was agreed to, by a large majority, and the resolution, as amended, was then agreed to.

The second resolution, that it is inexpedient to retain that article of the constitution which requires the judges of the supreme court to answer questions proposed to them by the governor and council, or either branch of the Legislature, was then read.

Mr. STORY of Salem said that it was exceedingly important that the judiciary department should, in the language of the constitution, be independent of the other departments; and for this purpose, that it should not be in the power of the latter to call in the judges to aid them for any purpose. If they were liable to be called on, there was extreme danger that they would be required to give opinions in cases which should be exclusively of a political character. There were two classes of cases in which the Legislature may demand the opinion of the judges—those of a public and those of a private nature. A question may be proposed in which the whole political rights of the State are involved. It is impossible that there should be an argument, and the individual most interested, will be deprived of a right which is secured to every person by the constitution, that of being heard. Questions of fact and of law may be decided without argument and without a jury. There was no necessity for such a provision. In cases where it is necessary to obtain a judicial decision, the Legislature may, by resolve, order a suit to be brought to try any question of law or fact, and have it regularly argued. Why then should the great principle be violated by taking away the right of trial by jury? The power of calling on the judges for their opinion, may be resorted to in times of political excitement, with the very view to make them odious, and to effect their removal from office. A better opportunity could not be afforded to an artful demagogue, for effecting the purpose of their re-

moval, than by drawing from them opinions opposed to the strong popular sentiment, and subjecting them to popular odium. It ought not to be in the power of the other departments to involve the judiciary in this manner. As the constitution now stands, the judges are bound to give their opinions if insisted upon, even in a case where private rights are involved, and without the advantage of an argument. However great the talents of the judges, however extensive their learning, they are never safe in deciding without an argument. Some judges of the greatest learning make it a rule, that no opinion which they have given without argument, shall be binding upon themselves, or on others. The greatest judges have sometimes changed their opinion on argument. They ought always to have the aid of the talents of the bar, before pronouncing their opinion. The right of being heard, and the practice of arguing all questions has, more than anything else, preserved the uniformity of the common law. He did not know that there was the slightest objection to the proposed amendment. It had the assent of nearly all, in not all the select committee.

The resolution was agreed to, by a large majority.

The third resolution which fixes the tenure of office of justices of the peace and notaries public, and provides that they may be removed upon the address of two-thirds of the members present of each house of the Legislature, was read.

Mr. STORY moved, for the purpose of conforming the resolution to the first as amended, to amend by striking out "two-thirds," and inserting majority.

Mr. VARNUM inquired the object of the resolution.

Mr. STORY said that doubts had arisen whether justices of the peace were removable by address. The first article relating to the judiciary power, provides that all judicial officers shall hold their offices during good behavior, except such, concerning whom there is different provision made—provided nevertheless, that the governor, with consent of council, may remove them upon the address of both houses of the Legislature. The doubt was whether the power of removal extended to those who were excepted in the tenure of the office. It was not a doubt of his own—he did not mean to give an opinion on it; but the committee were of opinion that the power ought to exist, and if there was any doubt it should be removed.

The resolution was agreed to.

The fifth resolution was read and agreed to.

The resolution of the same committee, on a motion referred to them that it is inexpedient to make any provision in the constitution against imprisonment for debt, was read and agreed to—297 to 2.

The resolution offered by Mr. BEACH for limiting to        years the term of office of judges, and providing that they might be reappointed on the expiration of the term, and that they should not hold their offices after a certain age, was read.

Mr. BEACH wished the subject might be postponed to Wednesday next. His object was that the first resolution of the judiciary committee might be first acted on. If the course taken upon that should give him an opportunity, he should consider it his duty further to illustrate on the motion. He therefore moved that the committee rise. Negatived.

Mr. PRINCE moved to fill the blank with *forty* years. Motion was withdrawn, and the resolution negatived, four or five only voting for it.

The committee then rose and reported their proceedings.

It was ordered that the resolutions which had passed in committee of the whole, should now be read in Convention.

The first resolution was read and amended, by adding the words "before each house."

The resolution as amended was passed to a second reading, and assigned for Monday next at ten o'clock.

The second, third and fourth resolutions were read and passed to a second reading, and also assigned to Monday at ten o'clock.

The resolutions relative to poor debtors and the tenure of judicial officers were read and agreed to.

*Harvard University.*—It was moved that the report of the select committee relating to Harvard College be now taken up. After some discussion, Mr. QUINCY moved that the further consideration of the report should be indefinitely postponed. Some discussion arose on this motion.

Mr. DEARBORN of Roxbury opposed the indefinite postponement. He thought an investigation of the subject was necessary, and suggested that the best way would be to appoint a committee to meet a committee of that institution, who should make a report.

After some further discussion, Mr. WEBSTER said he thought the motion was not in order—and called for a reference to the journal to ascertain the situation of the subject. The journal being read, Mr. QUINCY withdrew his motion.

On motion of Mr. THORNDIKE the committee of the whole was discharged from the further consideration of the subject—173 to 152.

The resolution was then read, "that it is inexpedient to make any alteration in that part of the constitution relating to the University."

Mr. MARTIN spoke against the report.

Mr. STURGIS moved an indefinite postponement.

Mr. STOWELL hoped the motion would prevail. The Convention had been in session almost seven weeks, and to all appearance were no nearer the end of discussion than when they began, unless the end of time was nearer. Many members were sick and many had gone home. The subject was fully in the power of the Legislature, and he thought it would be for the interest of the public that it should remain there.

Mr. RICHARDSON opposed the postponement.

Mr. HUSSEY would be satisfied with the indefinite postponement of the resolution, but if it was to be acted upon, he wished it might be done now.

Mr. FREEMAN of Sandwich was one of the select committee and concurred in the sentiment of the report, that it was inexpedient to make any alteration; but he was opposed to an indefinite postponement; that we were no nearer an end of the business was no reason for not discussing it—it was their duty to remain in session if it took a year and a day, until all the subjects were discussed. He thought if the affairs of the University were properly managed, and the board of overseers properly constituted, the subject ought to be examined into and properly discussed.

Mr. TILLINGHAST opposed the postponement. He said that there was great dissatisfaction in the minds of many people. He presumed if the subject was properly discussed and fully understood they would be satisfied.

Mr. CUMMINGS and Mr. DEARBORN spoke against the postponement.

Mr. WEBSTER said that it was new to him that any dissatisfaction or any doubts had existed about the foundation on which the privileges of the institution rested. It was said the College was rich. He hoped it was. If there was a question about the foundation it ought to be thoroughly considered. It was not beyond the power of change, like other establishments of the kind. He was not opposed to the substance of the motion of the gentleman from Roxbury. He would prefer that there should be no conference proposed with the government of the college. A committee might be appointed to inquire and report. The government of the college would of course give such information as they saw fit. If there was any question relative to the charter it would require some study. He would therefore move, if the motion for postponement were withdrawn, that a select committee be appointed to inquire into the constitutional rights of the institution; and also to give an account full as was convenient of the donations to it, by the State and by individuals.

Mr. STURGIS withdrew the motion to postpone.

The motion was made that a select committee be appointed to inquire into and report upon the constitution, rights and privileges of the corporation of Harvard College, and to report also on the amount of the donations which have been made to that corporation by the State.

Mr. RICHARDSON doubted whether there would be time for a select committee to examine the subject.

Mr. TILLINGHAST did not think it would take so much time for a select committee to examine it, as it would a committee of the whole.

Mr. S. PORTER of Hadley thought that the subject did not belong to the Convention, but to the Legislature, and objected to the appointment of a committee.

Mr. DANA objected to the commitment. He presumed that no one would raise a question whether they have the power to interfere in the affairs of the College, but whether it is expedient. In committee of the whole they might probably arrive at all they wanted.

He presumed the chairman of the select committee would find no difficulty in supporting his report, and that he would satisfy the inquiries that would be made in relation to the affairs of the institution.

Mr. AUSTIN of Boston was surprised at the opposition to the committee. It could do no harm unless to produce a delay of a few days, but might do much good. It would settle facts about which there was much doubt.

Mr. BALDWIN had the most profound veneration for all the officers of this institution, and for the institution itself. But he did not think it stood on the footing it ought.

The motion was agreed to—191 to 74.

Mr. DEARBORN was first named by the President on the committee, but he said that on account of his engagements he could not pay that attention which would be proper for the person standing first on the committee.

The committee was then appointed as follows : MESSRS. WEBSTER, DEARBORN, WILDE, TILLINGHAST, and DANA. Mr. DANA requested to be excused, and Mr. SALTONSTALL was appointed in his place.

Mr. MACK of Middlefield had leave of absence.

It was ordered that when the House adjourn it adjourn to Monday at 10 o'clock.

Mr. GRAY of Boston offered the following resolution :

*Resolved*, That the constitution be so amended,

That the senate shall consist of thirty-one members, sixteen of which to be a quorum.

That the Commonwealth be divided into about forty districts, each of which may send two members to the house of representatives.

That the governor only form the executive.

That the council be abolished.

That no other amendments to the constitution are necessary.

Ordered to lie on the table.

Mr. LYMAN of Northampton offered the following resolutions :

1. *Resolved*, That it is expedient that the number of representatives in the most numerous branch of the Legislature should be reduced ; and in order to preserve the principle of equality, the constitution be altered and amended, so as to provide that the number of representatives shall not exceed one for every three thousand inhabitants.

2. *Resolved*, That the house of representatives shall never consist of more than one hundred and sixty nor less than one hundred and twenty members, and that they shall be paid for their travel and attendance out of the public treasury.

3. *Resolved*, That the Commonwealth be divided into small and convenient districts by the Legislature thereof for the choice of representatives—that no town shall be divided for this purpose—that no district shall contain more than fifteen thousand inhabitants unless a town shall contain more than that number, nor less than six thousand inhabitants, except Duke's County, which district shall remain permanent and unalterable.

4. *Resolved*, That the several towns which compose any district shall hold their meetings for the choice of representatives in their respective towns, and that the chairman or senior member of each board of selectmen shall meet in the most convenient town in each district, to be designated by the Legislature, on the day succeeding such election, and compare the votes of the several towns duly certified by the respective town clerks, and shall give their certificates of the choice to the persons having the greatest number of votes therein.

5. *Resolved*, That the Legislature shall, according to a just and equal ratio, appor-



tion among the several districts the number of representatives to which each district shall be entitled, at their first session after the amendments to this constitution shall have been adopted by the people, and at their first session after every subsequent enumeration of the inhabitants by the government of the United States or of this Commonwealth.

Ordered to lie on the table.

The House adjourned.

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MONDAY, JANUARY 1, 1821.

The House met at 10 o'clock and the journal of Saturday was read.

Mr. VARNUM of Dracut moved that the committee for reducing amendments into the form in which it shall be proper to submit them to the people, be instructed to report from time to time as they shall mature the business before them.

Mr. VARNUM said his object was to have the report acted upon from time to time, that it may be committed to an engrossing committee, in order that the Convention may not be obliged to wait three or four days after all the principles of the amendments shall have been adopted.

The motion was agreed to. Leave of absence was granted to MESSRS. CRAWFORD of Oakham, WOODBRIDGE of Stockbridge, and THOMAS of Plymouth.

Mr. GREENLEAF of Quincy was put on the committee of accounts in the room of Mr. VALENTINE of Hopkinton, absent on leave.

Mr. DANA of Groton, chairman of a select committee to whom the subject had been referred, reported that it is proper to alter the constitution so as to provide that every male citizen of twenty-one years of age and upwards, except paupers who have resided in any town or district of this Commonwealth for the space of six calendar months next preceding any election, who shall by himself, parent, master, or guardian have paid any public tax, which may have been assessed within the two years next preceding such election, shall have a right to vote in the election of all civil officers.

Mr. SULLIVAN of Boston said he had a proposition to offer respecting the organization of the house of representatives. Three objects were to be kept in view in forming a plan in relation to this subject—that the number of the representatives be reduced—that the towns retain their corporate rights—and that the members of the house be paid from the public treasury. It was impossible to reconcile these three things entirely; he had however endeavored to approximate to a reconciliation of them. He therefore moved two resolutions; the first was for providing that every town containing eight hundred inhabitants should have a right to send one representative, 2,400 two representatives, making 1,600 the mean increasing ratio—that no new town should be incorporated with the right of sending a representative unless it contained 1,600 inhabitants, and that no town, now having eight hundred, should lose its right—if the num-

ber of its inhabitants should become less than eight hundred. The second resolution was for providing that half the expense for travel and attendance of the members should be defrayed by the State treasury and half by the respective towns, according to the number from each town. Mr. S. thought the consequence of these regulations would be that the number of representatives would not usually exceed 250.

*Senate and House of Representatives.*—The Convention proceeded to the consideration of the resolutions of the select committee on the senate and house of representatives, as reported by a committee of the whole.

Mr. DEARBORN of Roxbury offered some resolutions which he proposed to substitute for the first, second, third, fourth, eighth, ninth, tenth, eleventh, twelfth, thirteenth and fourteenth of the select committee. Mr. D's resolutions differed from those he offered at a former day and which were discussed in committee of the whole, by proposing that the senators should be elected for two years, half to be elected in each year. Mr. D. said he had thought of taking thirty-six for the number of the senate, as that had been reported by the select committee, and one hundred and forty-four for the house, making the house four times as large as the senate. He was not tenacious in respect to the numbers.

Mr. APTHORP of Boston moved that the resolutions lie on the table until the Convention had acted upon the resolutions of the select committee.

Mr. PRESCOTT said the principles of these resolutions, except as to the term of office of the senators, had been discussed four days in committee of the whole, and he thought it was better to take the question upon them at once.

Mr. STORV said it was immaterial whether they were taken up first or not. He considered the proposition of the gentleman from Northampton (Mr. LYMAN) as the only just and correct one for forming the house of representatives, but he had voted hitherto on the ground that it was impossible to carry it. If it should be adopted, he should have no difficulty in putting the senate on the basis of population, making the time of holding their office longer than that of the representatives. But if the report of the select committee is to be adopted, concerning the representatives, he thought there was no other check than taking valuation for the basis of the senate.

The question for the resolutions lying on the table was negatived.

A motion to commit them to a committee of the whole, was also negatived, after some discussion—100 to 183.

A motion being made respecting the further consideration of them,

Mr. WEBSTER observed that as the resolutions contained a new proposition for altering the constitution, the house having refused to commit them, by a rule of the Convention it could no longer act upon them.

The first resolution of the select committee which fixes the number of the senate at thirty-six, was then taken up.

Mr. DANA moved to strike out "thirty-six," and insert "forty." He was in favor of an increase of the number, because it would better balance the great number of the other house—because it would enable them to legislate with greater ease; and because, as a constituent part of the board of overseers of Harvard College, it would form a better check upon the executive government of the college and permanent members of the board. The board of overseers is composed of fifteen clergymen, and fifteen laymen, who are elected, of the governor, lieutenant governor, members of the council and senators, making in all, if the council is fixed at seven and the senate at forty—79. He thought that there ought to be a preponderating majority in this board on the part of the members who belong to the government of the Commonwealth.

Mr. GRAY of Boston said that although he had a great respect for the gentlemen who composed the select committee, yet as they were not agreed in the principles of their report, and as gentlemen of great talents and experience had expressed their doubt of the expediency of adopting the report, and as it did not agree with his own views in relation to the subject—he felt it his duty to vote against it. We had formerly forty senators; the separation of Maine from us had taken off more than half the territory, and almost half the people, and the important part of the legislative business of the Commonwealth was transferred to the general government. It was formerly provided that the council should be chosen from the senate, reducing the number to thirty-one. He was therefore opposed to increasing the senate above that number, but should be in favor of reducing it to twenty-eight or even to fourteen—one from each county. He saw no reason why fourteen were not competent to transact the business and also to form a check upon the other house. Though he had proposed thirty-one in the resolution which he offered on Saturday, he thought on mature reflection that twenty-eight would be a more suitable number.

Mr. QUINCY was in favor of the amendment, because it tended to preserve the constitution where it is.

Mr. AUSTIN of Boston said that he should vote in favor of the amendment, in the hope that the council would be chosen from the senate as heretofore.

Mr. MARTIN was opposed to the amendment. He wished to have the number reduced instead of increased. The people had expected that the expenses of the State would be reduced—but he should like to have gentlemen show one single thing that had been done to diminish the expenses of the people.

Mr. PRESCOTT said that some gentlemen were in favor of increasing, and others of diminishing the number. The select committee had adopted a mean number between what it is by the constitution when the counsellors decline, and what it is when they accept. They had agreed on thirty-six, in the presumption that the council would not be taken from the senate. But, if it should be determined to take them from the senate, the number would be but two

less than under the present constitution. If it should be left optional with those elected counsellors whether to accept or not, they would probably resign when the public business required it, and when they saw fit to vacate their seats in the senate, twenty-nine would be competent to perform the duties. He did not think that fourteen, the number proposed by his colleague, were enough. He hoped the number would be kept at thirty-six, as proposed by the committee. It had been said not to be so safe as constituting a part of the board of overseers of the College. He did not see the force of the argument. The governor, lieutenant governor, counsellors and senators would make forty-five, being one third more than the permanent members of the board. If the number was increased to forty, the restriction of each district to six would operate unjustly. He proceeded to state the operation of the restriction at the present moment on the counties of Suffolk and Essex.

Mr. BLAKE hoped the amendment would prevail, because he had reason to believe that they should fall back to the old principle of choosing counsellors, and twenty-nine he thought would be too small a number to legislate conveniently.

Mr. STORY was decidedly opposed to the amendment. It appeared to be the necessary and natural result of it to abandon the principle of valuation and population altogether, and to adopt something intermediate for the benefit of one or two districts. If the amendment was agreed to, the principle of apportionment, nominally adopted, would not be adopted in truth. He proceeded to show the inequality which would result from the limitation of the number from any one district, if the amendment were adopted, and replied to the argument of the gentleman from Groton, founded on their duties as members of the board of overseers.

Mr. DANA replied to the argument of the gentleman from Boston, (Mr. PRESCOTT) and contended that the limitation of the principle would be just in its operation on the large districts. In relation to the board of overseers, he said it was well known that distant members did not constantly attend the meetings of the board.

The question was taken on the amendment and lost—90 to 206.

The question recurring on the resolution,

Mr. LINCOLN of Worcester moved to amend by adding that the senators should be chosen by the inhabitants of the districts into which the Commonwealth should be divided by the General Court, and that the General Court in assigning the number of senators, should govern themselves by the proportion of the population in each district according to the last preceding census. Mr. L. said he did not mean to go into the argument in support of his amendment. His object was to change the basis of the senate from valuation to population. It was his duty to resist the principle adopted by the select committee. It was in opposition to a fundamental rule for the organization of a representative body. It produced great inequality, not only as to different parts of the Commonwealth, but also as to individuals living in those parts. He presumed it would not be

contended that the same individual at different times should have different power merely from changing his residence ; but it was the case that a man living in Boston has a greater influence in the government, from the accumulation of property belonging to others, than he would have in another part of the Commonwealth, although he has as good discretion in one part as in another. Suffolk by valuation would be entitled to eight senators, which is arbitrarily restricted to six. Essex, containing a population of upwards of 70,000, was entitled to no more than Boston. Middlesex containing 52,000 was entitled to but half the number, and was independent of the restriction. Hampshire, Hampden and Franklin united, were entitled to only four, though containing 76,000 inhabitants. He said this was a violation of the principle on which the whole government is based.

Mr. NICHOLS of South Reading said this was an important subject, and he hoped the amendment of the gentleman from Worcester would be adopted. He moved that when the question was taken it should be by yeas and nays.

Agreed to.

Mr. LAWRENCE of Groton said the gentleman from Worcester seemed to have forgotten that this first resolution was to be taken in connection with the resolutions respecting the house of representatives, in which concessions are made to give an equivalent for the excess of power, of some districts, in the senate. The whole system ought to be taken together.

Mr. SIBLEY of Sutton said he had always been opposed to the basis of valuation. Gentlemen he thought read the constitution wrong. The constitution said according to the taxes paid. Public taxes in money were not the only kind of taxes. If the value of the time and money spent by the citizens of some of the populous counties in equipping themselves for military duty and in performing it, were considered, it would appear that these counties paid as great a tax as Suffolk.

Mr. STORY moved to amend the amendment by adding that the house of representatives should be founded on the same basis of population, and then be divided into convenient districts, so that one representative should be allowed for 3000 inhabitants, and no town to be divided for this purpose.

Mr. VARNUM thought the propositions respecting the senate and house of representatives ought not to be blended.

Mr. BLAKE said if the two propositions could be united he hoped they would. It would put to the test the plan of the gentleman from Worcester. On the principle of population advanced by him, the town of Hull would be entitled to one representative, and the town of Boston to 4000.

Mr. STARKWEATHER of Worthington said he was sorry the amendment was proposed at this time, because it embarrassed the subject, which before was distinctly understood. He thought the principle of the gentleman from Worcester was unsound, and that of valuation

reported by the committee correct, and he hoped such would be the opinion of the Convention.

Mr. STORY said there was no question as to his amendment being in order, and it was the only fair way of testing the principle of the gentleman from Worcester. If population was the only just basis of the senate, as the gentleman contended, it was of the house also. If gentlemen were willing to take it as the basis of both branches he would agree with them, making the term of service of the senators longer. If the gentleman from Worcester intended to follow up his principle, he ought to vote for this amendment to his proposition. Gentlemen who wished to have the senate based on population seemed to want to separate the consideration of the subjects of the senate and the house. They ought to be considered together. It was a double injustice to take in the house of representatives all advantage of the abandonment of the principle of population, and in the senate of the adhering to it.

The question on Mr. STORY's amendment to the amendment was taken and negatived—146 to 170.

Mr. LELAND of Roxbury said that in the examination of this subject he was inclined to the opinion that founding the senate on population was theoretically correct. But if there was any surrender of the principle, property ought to be called in as an equivalent. But we should also consider the extent of the power to be delegated. Checks and balances, it was agreed on all hands, were necessary, and if they could not be obtained otherwise, the principle of apportionment should be modified. One of the powers of the Legislature was the right of taxing, directly and indirectly, without limitation. It may tax banks, auctioneers, merchants, manufacturers, &c., in such a manner, that it may bear almost exclusively on one part of the country. In respect to the other powers of the General Court he could see no difference whether the senate were founded on population or valuation, but in respect to taxes, he would ask gentlemen whether the members of the Legislature were interested in proportion to the population of the districts they represented. Mr. L. moved to amend the amendment of Mr. LINCOLN, by adding that all moneys for the use of the Commonwealth shall be raised by an equal assessment upon the property and polls of the inhabitants thereof.

Mr. STORY hoped this amendment would be adopted. It would enable them to provide that the taxes shall be raised where a corresponding influence is given.

Mr. LELAND said his object was to have only one mode of taxation; that the Legislature should not raise money by indirect taxes.

The question was taken upon Mr. LELAND's motion and decided in the negative.

Mr. J. PHILLIPS of Boston said he should make a few remarks, but with great plainness. He asked gentlemen how they could justify it to their conscience to reject the amendment of the gentleman from Salem, and this of the gentleman from Roxbury, and then vote in favor of the amendment of the gentleman from Worcester,

to throw the merchants of the seaboard into the power of those who may have an interest to lay all the burden of taxes upon them.

Mr. ABBOT of Westford moved to reconsider the vote by which the amendment offered by Mr. STORY was rejected.

Mr. STORY moved that when the question was taken on the motion to reconsider the vote on the amendment offered by him, it should be by yeas and nays—agreed to.

The question on the motion to reconsider, was decided in the affirmative—yeas 218, nays 148.

Mr. LINCOLN opposed the amendment, because to admit it, would deprive the small towns of their corporate rights. In becoming incorporated towns, they received certain privileges, and came under the obligation of performing certain duties. These rights they had long enjoyed, and they would not readily relinquish them. The objection to continuing them in the enjoyment of these rights was that the house would be too numerous. This was an evil which could not be avoided, and it was attended with advantages. It formed a channel of communication from the government to the people, and from the people to the government, more perfect than if the representation were smaller. He proceeded to answer the objection that the mode was unequal.

Mr. QUINCY was in favor of the amendment because he wished to put two propositions together, which were in their nature inseparable.

Mr. BLAKE was in favor of the amendment, and answered the argument of Mr. LINCOLN relating to the corporate right of towns.

Mr. DANA inquired whether if the amendment to the amendment were adopted, the amendment offered by Mr. LINCOLN would be capable of division.

Mr. STORY said that the proposition to amend, modified by the amendment which he had proposed, would present but a single question. A great part of the difficulty which had arisen here had proceeded from keeping separate propositions which, in their nature, were united. The gentleman from Worcester ought to bring out his whole plan and not argue in favor of part of it, on a principle which would be opposed to the other part of it. He had supported his amendment for fixing the apportionment of representation in the senate on the basis of population, upon the ground that it was a fundamental principle in relation to government. If it was a fundamental principle in relation to one house it was in relation to the other. If the gentleman insisted upon this principle in relation to the senate, he should follow it up in relation to the house, and not have the argument against the present organization of the senate, that population is the only just basis of representation, and in the organization of the house that the ancient right of corporations is to outweigh every other principle. He considered the two propositions as inseparable.

The question was taken on the adoption of the amendment to the amendment and agreed to—188 to 138.

The question being stated on the amendment as amended, a division was called for, for the purpose of taking the sense of the House on the original amendment.

The division was declared by the president to be not in order; from this decision there was an appeal.

Mr. DANA and Mr. PARKER of Charlestown spoke against the decision, and Mr. PRESCOTT and Mr. WEBSTER in favor of it.

Mr. LINCOLN said he considered the decision correct, and that he was prepared to vote against his own proposition.

The decision was confirmed by a large majority.

The question was then taken on the amendment as amended, and negatived—31 to 301.

The question was then taken on passing the first resolution to a second reading, and decided in the affirmative—210 to 81.

The House adjourned.

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TUESDAY, JANUARY 2.

The House met at half past 9 o'clock, and attended prayers offered by the Reverend Mr. Jenks. After which the journal of yesterday was read.

Mr. PRESCOTT of Boston offered the following resolution :

*Resolved*, That it is expedient so to alter and amend the constitution, as to provide that after the year 1830 the number of inhabitants which shall entitle a town to elect a representative, and the mean increasing number which shall entitle a town to elect more than one representative, shall be proportionally increased, so as that the whole number of representatives shall not exceed 275, and that every tenth year afterwards, the said number of inhabitants shall be so increased as that the whole number of representatives shall never exceed 275; provided, that no town, which, according to the census now taking under the authority of the United States, shall be entitled to elect a representative every year, shall ever be deprived of that privilege unless the number of inhabitants therein shall be reduced to less than 1200; in which case, such town shall be classed and entitled to send a representative every other year, and no town or town and district, which, according to said census, shall be entitled to send a representative every other year, shall ever be deprived of that privilege.

Ordered to lie on the table.

The House proceeded to the consideration of the resolutions of the select committee on the senate and house of representatives, as reported by a committee of the whole.

The question was upon the second resolution, which proposes that the number of senatorial districts shall never be less than ten.

Mr. LINCOLN of Worcester said the sense of the House had not been taken distinctly on the proposition he offered yesterday as an amendment to the first resolution. He had hoped that the members who were pleased with it might have the privilege of recording their names in favor of it; but it was embarrassed by another amendment, so that the object of the motion to take the question by yeas and nays was defeated. He hoped for the indulgence of the House, if he renewed his motion, with an additional clause as an amendment to the present resolution, for the purpose of taking



the yeas and nays upon it. Mr. L. then moved to amend the resolution by adding that the number of senators to be elected in the districts respectively, shall be in proportion to the number of inhabitants therein; and no county shall be divided into more than two districts, nor any two counties united, except Dukes County and Nantucket. Mr. L. said the object of part of the amendment was to enable the Legislature to divide the counties of Essex and Worcester. In regard to the other part, those who held that valuation was the proper basis for the senate, would act consistently in voting against the amendment; but those who admit that population is the proper basis, if extended to both branches, would yield the point if they did not vote in the affirmative.

Mr. DWIGHT of Springfield rose on a question of order. He said this subject had been fully discussed and decided yesterday.

Mr. WEBSTER said he could see no end of the discussion, according to the present course of proceeding. The rule of the Convention required that every proposition for an amendment to the constitution should be discussed in committee of the whole, before it was acted upon in convention. He did not recollect that this amendment had been discussed in committee, and he asked for the decision of the chair whether it was in order.

The PRESIDENT said that the same objection occurred to him yesterday in relation to the proposition made by the gentleman from Roxbury, (Mr. LELAND;) as that was acted upon for the sake of uniformity, he should decide the present amendment to be in order.

Mr. LINCOLN proceeded. He said there was no connection between this proposition and the one offered yesterday by the gentleman from Salem, (Mr. STORY.) That gentleman might vote in favor of this, and then, when the subject of the house of representatives came before the Convention, he might move to put the representation in the house upon the same basis. To connect these two propositions was creating confusion. It forcibly reminded him of what had been done in Congress when two things were connected that had no dependence upon each other. He alluded to the bill for the admission of Maine into the Union in connection with the admission of Missouri. That was a struggle for checks and balances for balancing the power between different parts of the Union. Here, too, was a struggle between population and wealth. He thought it better that wealth should be in the custody of the people, than the people in the custody of wealth. If population was proper for the basis of both branches, it was proper for one, and many gentlemen who would insist upon corporate rights for the basis of the house, if valuation was taken for the senate, would yield if population should be substituted for valuation.

Mr. STORY said this was the same proposition that was introduced yesterday, and to which he moved his amendment. The gentleman's argument was that they were independent propositions, and it was his (Mr. S.) argument, that they were necessarily connected, and it

had been determined by the House that they should be connected. Nothing was more fair than this, and he asked, would gentlemen be willing to be led blindfolded into the adoption of the gentleman's proposition respecting the senate without knowing what was to follow with regard to the other house. He was sorry the gentleman had thought proper to renew his motion, but he pledged himself that as often as the gentleman should renew it, he (Mr. S.) should move to amend by adding the amendment he offered yesterday; and this from necessity. Mr. S. concluded by moving to amend the amendment by adding that the representatives should be chosen in convenient districts according to population.

Mr. QUINCY rose to a question of order. He said that both of these propositions, in principle, had already been acted upon. There was too much refinement between the gentleman in the air (Mr. L. in the gallery) and the gentleman on the ground, (Mr. S. on the floor.) Between them both, the House would be ground between the upper and the nether millstone.

Mr. WEBSTER said he must renew his objection on the question of order, on account of the rule of the Convention.

The PRESIDENT said he should adhere to his decision and wished the gentleman would appeal.

Mr. WEBSTER appealed.

Some debate ensued, in which Messrs. LINCOLN, STORY, MORTON and QUINCY took part.

The question whether the decision of the chair was correct, was determined in the negative—126 to 150.

The question was taken on the resolution passing to a second reading, and was decided in the affirmative.

Mr. DANA moved to postpone indefinitely all the resolutions relating to the senate. Negatived.

The third resolution proposing that no county shall be divided for the purpose of forming a district for the election of senators, was read and passed to a second reading without debate.

The fourth resolution was read; which provides that the several counties shall be districts for the choice of senators until the General Court shall alter the same—excepting that the counties of Hampshire, Hampden and Franklin, shall form one district for that purpose—and also, that the counties of Barnstable, Nantucket and Dukes County shall together form a district for the purpose, and that they shall be entitled to the following number of senators, viz.:—Suffolk, six; Essex, six; Middlesex, four; Worcester, five; Hampshire, Hampden and Franklin, four; Berkshire, two; Plymouth, two; Bristol, two; Norfolk, three; Barnstable, Nantucket and Dukes County, two.

Mr. LINCOLN moved to amend the resolution by reducing the proportion of Suffolk from six to five, and he moved also that the question on the amendment should be taken by yeas and nays.

The motion for taking by yeas and nays was negatived, 54 out of 274 voting in favor of it.

Mr. PRESCOTT said it had been determined that the senate shall consist of thirty-six members—that valuation shall form the basis—and that no district shall have more than six. Suffolk paid one fifth of the taxes, which would entitle it to seven, besides the tax on banks; it was understood also, that these resolutions formed an entire system. Under these circumstances he trusted the amendment would not be adopted.

The amendment was negatived—130 to 180.

The resolution then passed to a second reading.

The fifth resolution, proposing to substitute "the first Wednesday in January" for "the last Wednesday in May," wherever it occurs in the second section of the first chapter, was read and passed to a second reading without debate.

The sixth resolution providing that the governor with four of the council shall examine the returns of the votes for senators, was read and passed to a second reading without debate.

The seventh resolution fixing the quorum of the senate at nineteen, was read and passed to a second reading without debate.

The eighth resolution was read; which provides that every corporate town containing 1200 inhabitants, and also all corporate towns or districts now united for the purpose of electing a representative, and having together a like number of inhabitants, may elect one representative.

Mr. PICKMAN of Salem said he was constrained by a sense of duty to express briefly the objections which he had against the system proposed by the select committee, and agreed to in committee of the whole, respecting the organization of the house of representatives. He considered the system to be unequal and unjust—calculated to produce a greater number, generally, in the house, rather than to diminish it—calculated to increase the expenses of the Commonwealth—and a bold, dangerous and inexpedient innovation on the present system. He would show it to be unequal and unjust, not by imaginary cases, but by mathematical calculations. He would not pledge himself for perfect accuracy in his calculations, but they were sufficiently accurate to justify all the inferences that he should make. By the report, all the towns in the Commonwealth, containing from 1700 to 3400 inhabitants, would lose a large proportion of representation. He called the attention of members to the effect it would produce on the large and respectable county of Essex. The representation of Salem would be reduced from 13 representatives to 5, of Ipswich from 4 to 1, leaving 2370 inhabitants unrepresented; Newbury from 6 to 2, Lynn from 5 to 2, Rowley from 2 to 1, Marblehead from 6 to 2, leaving 2300 inhabitants unrepresented. It was unnecessary to go into more particulars. The result of the whole was, that the representation for 72,000 inhabitants would be reduced to 30, while Middlesex, with only 52,000 inhabitants, would have 32 or 33 representatives. He asked if this was not unequal and unjust. In addition to this, Essex would pay for 60 representatives and have 30; Middlesex

would pay for 38 or 39 and have 33. Was not this unequal and unjust? Essex had frequently, in the course of the debates, been put on a footing with Suffolk. But Essex derived no advantage from the senate being placed on the basis of valuation. Deriving no advantage from this principle, why should it suffer the diminution in its representation from the other part of the system? The county of Plymouth was in a similar situation. With 35,000 inhabitants it would have 16 representatives, but compared with Middlesex it ought to have 22. Plymouth sends 2 senators only—it gains nothing from the principle of valuation. Why should this arbitrary rule operate to its disadvantage without giving any equivalent? When gentlemen considered that 72,000 inhabitants would have no more representation than 52,000—that the towns containing between 1200 and 3600 inhabitants would suffer a loss in their representation, and yet have to pay for the representatives of the small towns, which gained in representation, they could not but admit that the system was unequal and unjust. In respect to the size of the house, it would be more numerous and more expensive than at present; it would amount to 275 or 280; but admitting that it would not exceed 260, the members being paid from the treasury of the Commonwealth, the small towns which would pay but a small part of the tax for representatives, would be induced always to send a representative. There was no reason to suppose the representatives would not attend during the whole session, except such as were prevented by the providence of God; making allowance for these, from 240 to 250 would usually attend. This was about a hundred more than attended the last year. The whole number chosen last year was 195, and the highest number that ever attended was 150. By the proposed system we should have to pay 250 annually, whereas in common times, under the present system, we should have to pay for 150. If it was an object to reduce the house for the facility of transacting business, 150 were enough, and all above that number were unnecessary. But the strongest objection was, that 20,000 voters, voting every other year, were put on a different footing from the other voters. This was a dangerous part of the system. Every one of these 20,000 would be incessantly applying to the Legislature to be put on the same ground with those who voted every year. He did not believe that there was any man who, if he were asked whether he would pay half a dollar and vote every year, or a quarter of a dollar and vote every other year, would not reject paying the quarter of a dollar and voting every other year. He would wish to have the right of voting every year considered as the birthright of every citizen. The amendment which permits 140 small towns to be represented every tenth year, when the valuation was settled, would give an overwhelming majority to decide everything. He had been on the committee of valuation, and had witnessed the efforts made to put the country towns as low as possible, and to throw the burden on the seaports. He was astonished at the conduct of some gentlemen from Boston, who seemed to con-

sider the senate as everything, and the house as nothing. The house was often as useful a check as the senate, and it was of more importance that the house should be established on right principles than that the senate should. He had voted for the principle of the senate, but he did not think it of such transcendent importance that everything else should be sacrificed for it. He should prefer that the representatives should be chosen by districts, but he considered it impracticable to obtain the adoption of that plan, and he was therefore willing to adhere to the present system. He did not wish for any alteration in the constitution, except so much as was necessary to put the senate on its old footing. He considered that it was the just and proper construction of the constitution, that the representatives should be paid by the respective towns. He would not presume that the Legislature would do wrong, but if it should pass an act for paying them out of the public treasury, a house of 500 members would be so unwieldy and expensive, that the act would soon become unpopular, and be repealed. He was as impartial and independent on this subject as any man. He had arrived at an age when life and its solitudes must soon pass away. He stood there, not for himself but for posterity. He could truly say, that it had always been his ardent desire to preserve our institutions, and transmit them to posterity unimpaired; and he begged gentlemen to consider that when they stood upon the constitution they stood upon strong ground.

Mr. PRESCOTT said that the question was whether any amendment should be made to the present system of representation, for the gentleman from Salem, who opposed the report of the committee, had proposed no new plan. The number of representatives by the last enumeration of polls was 511, and by the next would be as high as 540. What plan had been offered for reducing the number preferable to that proposed by the committee? If it was the opinion of the House that the number ought to be reduced, and no other plan was proposed, the report of the committee must be taken, however defective. He asked if it was practicable to do business with a house of 500, or if a house which might, for a part of the session, consist of that number, and before the close of it might be reduced to a very small number, or which might be so fluctuating, that seven or eight whole quorums of different members might be formed, in the course of a single session, was not a great evil. It was said that if the members were paid by their towns they would not attend, and the house would not be too large. But on questions of great interest they would attend for the purpose of carrying particular measures, and would then return to their homes and leave a very thin house. There were many small towns which would send members for a particular purpose, but would not be permanently represented, and it was for the interest of all that they should be represented, and equally. It was objected that the plan was unequal. He asked, if any system could be found that should not operate unequally. A representative from each town would give

290 members; and if the large towns had an increased representation, in any proportion to the number of their inhabitants, it would make a house of more than 400 members. There was therefore no other mode of reduction than by uniting the small towns, or permitting them to send alternately. The latter mode seemed to be preferred by the members from the small towns. The gentleman from Salem had said that the system operated unequally on counties and towns. This was true, but it operated on none more unfavorably than on the county of Suffolk, which, according to the report, by the census of 1810, would be entitled to but fourteen members, while her proportion, according to her population, compared to that of the whole State, would be twenty-one.

|                  |               |    |
|------------------|---------------|----|
| Essex would have | 32—proportion | 38 |
| Middlesex        | 33            | 28 |
| Worcester        | 38            | 35 |
| Hampshire        | 44            | 41 |
| Plymouth         | 13            | 18 |
| Bristol          | 13            | 15 |
| Berkshire        | 22            | 18 |

Norfolk will neither gain nor lose.

It was true there was an inequality, but not so great as to be of much importance. He did not agree with his friend from Salem, that what was granted in relation to the senate was of no consequence. It was some equivalent for what was lost in the house. It made no difference that they are to come from a particular county, since it is the same interest that they represent. If the additional senators came from Essex instead of Suffolk he should be as well satisfied. The expense of the house would by this plan be reduced. There would generally be no more than two hundred members present, and there would be a degree of uniformity in the house. He had proposed a limitation of the number, which he hoped would be adopted. Although the small towns will not be entitled to a representative every year, they will have their full proportion of influence. It was for them to choose whether they would be represented alternately, or would have the power of uniting for the purpose of being represented permanently. He was sorry that they had not accepted the proposition for authorizing them to unite for this purpose. If any member from a small town would now move to insert that proposition, he presumed there would be no objection to adopting it.

Mr. DWIGHT of Springfield said that the amendment agreed to in committee of the whole, authorizing all the small towns to send a representative on every year of taking the general valuation, appeared to be a departure from the principle of the report. He could see no reason for it. It appeared to him that there was the same reason on the year of the valuation as on every other year, for adhering to a principle which would give something like equality to the representation from different parts of the Commonwealth. It was perfectly obvious that on this year the small towns would get

double the influence they have a right to ; and by exercising this influence at each return of the general valuation they will have a control over our taxes for the whole time. The principal objection to the present system was that the body is too numerous. But we should look only at practical results. It will be found that in consequence of the check from requiring the payment of members by the towns, the number has been so reduced that it has not been, in fact, so large as this report will make it. The average number of members attending for several years is not more than one hundred and fifty. The operation of the report, then, will be to make the house more unwieldy and expensive than the old system. He was in favor of districting. As far as he understood the views of gentlemen, they thought that this would be the best system, if it could be carried. Why should we distrust the good sense of the people of the Commonwealth, and refuse to give a chance for a system which is acknowledged to be the most perfect, from the apprehension that the people will not approve of it. He wished at least, that the sense of the House might be taken upon the expediency of adopting this principle, and also on the question of retaining the present system so modified as to expressly take away the right of paying the members out of the public treasury. He wished first to take the latter question, and for that purpose, he offered the following resolution :

“That it is proper and expedient so far to alter and amend the constitution, as expressly to provide that the attendance of members of the house of representatives shall in all cases be paid by their respective towns ; and that it is not expedient to make any other alteration in this part of the constitution.”

That the Convention might go into committee of the whole on this resolution, Mr. DWIGHT moved that the report of the committee be laid on the table.

Mr. BOND opposed the motion, because he wished first to try the question, whether the representatives should be chosen by districts, which he considered much the preferable mode.

Mr. LAWRENCE was in favor of the report, and for that reason opposed to the motion.

Mr. WEBSTER suggested that as the sense of the House could not be taken in Convention on the other projects, it would be best to go into committee of the whole, and refer to that committee all the projects which have been offered. He was in favor of the report if the House generally approved of it. But he should not be in favor of it if he should find there was any strong local opposition to it. He thought they ought to go into committee of the whole, and affirm or negative the different propositions offered, in their proper order. There were two causes for altering the constitution—one that the house was too large, and the other that there was danger it would be increased by adopting the system of paying out of the treasury, which would bring up a body of more than five hundred. The natural order would be to take up first the question, whether the present system shall be retained with an express pro-

vision that the members shall be paid by the towns. If that was rejected, and by vote of the small towns, we should hear no more complaint of the disfranchisement of the small towns. He wished to have the recorded sense of the towns, whether they would accept the right of permanent representation, on the condition of paying their own members. If they would not, the House would be ready to proceed with a firm step in reducing the number in the best mode that should present itself. Next would come the question of districting, and if that should be negatived, the House would be fully prepared to act on the report.

Mr. SIBLEY of Sutton was opposed to going into committee.

Mr. BLAKE was satisfied with the arguments which had been offered in favor of the report. He thought that little attention should be paid to objections made to it, which were not accompanied with some plan for avoiding them.

Mr. MARTIN was opposed to the report of the select committee, and in favor of the proposition for requiring towns to pay their own members.

Mr. JACKSON of Boston said he understood that the gentleman who made this motion preferred the system of districts. The gentleman from Northampton had offered some resolution proposing this mode. He thought that these resolutions might now be taken up as a substitute for the resolution before the House, and render the present motion unnecessary.

Mr. DWIGHT withdrew his motion for laying the resolution on the table.

Mr. LYMAN of Northampton moved to amend by striking out the resolution before the House, and substituting the resolutions submitted by him on Saturday last for dividing the Commonwealth into districts.

The motion was decided by the President not to be in order, the resolutions not having been discussed in committee of the whole.

Mr. LINCOLN moved to amend the eighth resolution by adding a proviso, "that every town shall have a right to one representative." This motion was decided to be not in order, on the ground that it proposed a substantial amendment to the constitution, on a principle which had not been discussed in committee of the whole.

Mr. BANISTER of Newburyport offered for consideration a proposition as a substitute for that of the select committee. That every town of a thousand inhabitants should have one representative, that two thousand should be the mean increasing number; that every town which now has a representative shall still be entitled to one, and that the attendance should be paid by the towns—a new apportionment to be made after each census.

Mr. JACKSON moved to amend by striking out the resolution, and inserting that which had been offered by Mr. LYMAN, and discussed in committee of the whole, some days since. It contained the general principle that representatives should be chosen in districts,



without going into details—representatives not to exceed one for three thousand inhabitants. These could be added by separate resolutions, if the general principle should be agreed to.

Mr. VARNUM called for a division, so as to take the question first on striking out the resolution of the select committee.

Mr. JACKSON said that he had not heard, and he did not wish to know what would be the effect of any proposition upon the political parties. He thought that a very unimportant consideration. He looked at the question only as it regarded the construction of the house for answering the purposes for which it is principally intended. Few of the objects for which the house is constituted, relate to politics. The principal object is to make laws. As his whole life had been devoted to the consideration of the laws, it was with a view solely to this object that he felt interested in the question. He did not care whether a larger or a smaller number came from Suffolk or from Berkshire—but he did care whether the house was so constituted as to make wise and equal laws. He wanted, and the people want a Legislature that will be able to look to the state of the Commonwealth—to make such laws as are suitable to regulate the intercourse between man and man, and to provide for the good order and welfare of society, as well as to provide for the petty interests and local concerns of particular corporations. If we could have a house of representatives of eighty, a hundred, or a hundred and twenty members, with a senate of thirty-six, it would constitute a Legislature, he thought, more suitable for these purposes than a larger body. One object was to reduce the house of representatives—another, that the people of different parts of the Commonwealth should enjoy an equal influence. The proposition of the gentleman from Northampton would effect these objects. It has the merit of perfect equality—it would give to every voter the same influence in the election of members, and the same influence in the house. The gentleman from Salem had clearly and forcibly pointed out some striking inequalities in the report. It was besides liable to the objections that the small towns were to be half the time deprived of their representation, and that it still contained a number larger than could deliberate clearly and coolly. If the number was smaller, they would all attend, because their absence would be noticed, and with one body sitting all the time, the business would be completed in shorter sessions. It was said there were prejudices against this mode. He had too good an opinion of the people of this Commonwealth to believe they would reject a system that was most suitable, and that was perfectly just and equal, for these prejudices. There might be some opposed to it from private motives, but ninety-nine in a hundred would have none such. By the present system, men are chosen for local purposes, and as soon as they get the measure through for which they were elected, they go home and pay no attention to the public interest. Do we want to have men to come here as representatives of the corporations only—or as men of enlarged views to legislate for the whole Com-

monwealth? The gentleman from Salem had exposed the inequalities of the system reported by the committee, in a manner so unanswerable that he would say nothing upon that subject, but would leave it upon his argument. As to the argument founded on the corporate rights of towns, there was nothing in it. They have a right to have a constitution as good as they can make it, but it is not a corporate right, but a right of individuals. The burdens imposed on towns to make roads, support schools, &c., are for their own benefit, and if they are not fully compensated by the advantages which they exclusively derive, they have the further equivalent that the same burdens are imposed on all other towns. But suppose they have burdens in consequence of their corporate existence, having a right to send a representative here, will not make them less; he cannot take them off. He did not like the proposition in the report, so well as the present constitution. It would give a larger house, cost more money, and do less good. He thought it was not the best that could be adopted, and he did not see any serious objection to that of the gentleman from Northampton. If adopted here, and the majority of the people should be in favor of it, he thought it would be the best system. If the people should reject it, we should be in the same situation in which we now are. He hoped that, modified as it might be, it would pass, and the Convention could then go on to arrange the districts. Part of the plan was, that the districts should remain forever unalterable. There would then be no change for party purposes, and the apportionment of representatives, being matter of figures, would not be liable to abuse.

Mr. STORY said that after the able and unanswerable argument of the gentleman who last spoke, he would say nothing in support of the proposition, but he thought that the proper and necessary course before acting on the report of the select committee, was to act on all the other propositions. He hoped therefore that the gentleman from Dracut would withdraw his call for a division of the motion.

Mr. VARNUM thought that the able argument of the gentleman from Boston, went in favor of the proposition of the select committee as fully as it did in favor of that of the gentleman from Northampton. The report of the select committee was kept so continually buried in smoke, that it was impossible to get sight of it. He had made the motion to divide for the purpose of coming to the question on the resolution of the select committee—those who were in favor of it in preference to all other propositions, would vote against striking it out. He thought it was time to come to this question, and he could not therefore withdraw his motion.

Mr. AUSTIN of Charlestown was in favor of the motion for the reasons urged by the gentleman from Boston. He proceeded to support the motion on other grounds.

Mr. JACKSON said that if the motion should be carried to strike out, and the proposition for districting should not prevail, any one

who voted for striking out, could move to reconsider the vote for striking out, so as to re-insert the resolution of the select committee.

The question on striking out the resolution of the select committee was taken, and decided in the negative—85 to 249.

The amendment made in committee of the whole, by inserting the word districts, was agreed to.

The question was then stated on passing the resolution.

Mr. MARTIN spoke against it.

Mr. HOYT of Deerfield had been uniformly in favor of districting, but he was satisfied that the House would not agree to it, and that the people would not sanction it. He saw no other way of reducing the number of the house, than to accept the report of the committee. He did not expect it would reduce the expenses of the house, which would be a great object. He had seen three or four hundred members present at the beginning of a session, and before the session expired the house was obliged to send out precepts into the neighboring towns to keep a quorum.

Mr. BOND was opposed to the report because it did not reduce the house of representatives so low as it would commonly be under the present constitution; and for this reason he should vote against the resolution.

Mr. J. LITTLE of Newbury called for the yeas and nays on the question. Agreed to.

The question was then taken, and the resolution passed to a second reading, by the following vote:

*Yeas*—Messrs. Abbott, Aldrich, E. Allen, J. Allen, P. Allen, Alvord, Apthorp, Arms, Atherton, J. T. Austin, J. Baldwin, T. Baldwin, Bangs, S. Barker of Methuen, S. Barker of Andover, G. Bartlett, E. Bartlett, Barrett, Bassett, Billings, G. Blake, J. Blake, Blanchard, A. Bliss, Bowdoin, Bowman, J. Boyden, S. Boyden, Brooks, Burts, E. Chapin, Cheney, Clark of Ward, Clark of Waltham, Cleaveland, Cobb, Cook, Coolidge, Conant, Cotton, Crandon, Crehore, Crocker, C. Cummings, S. Dana, D. Davis, Dawes, P. Dean, Dewey, E. Doane, J. Doane, J. C. Doane, Dodge, S. Draper, J. Draper, A. Draper, Drury, W. Dutton, D. Dutton, Eames, Edwards, Ellis, R. Eels, G. Eels, Evans, N. Fisher, J. Fisher, Flint, Foote, Forward, Foster, Fowler, J. Freeman, S. Freeman, French, H. Gardner, A. Gates, Gibbs, Gifford, J. Green, Greenleaf, Gurney, E. Hale, N. Hale, D. Hale, A. Hamilton, H. Hamilton, W. Harris, T. Harris, jr., Hazard, Hearsey, Hedge, Hill, Hills, Hoar of Concord, Hodges, Holden, A. Holmes, Hopkins, Houghton, N. Houghton, Howes, S. S. Howland, Hoyt, Hull, Humphrey, W. Hunewell, J. Hunewell, Hussey, C. Hyde, J. Jackson, A. Jewett, J. Jewett, Jones, Judd, Kasson, Kellogg, Kimball, E. King, Knowles, Knowlton, L. Lawrence, B. Lawrence, Leland, L. Leonard, N. Leonard, Z. L. Leonard, Lester, Lewis, H. Lincoln, T. Lincoln, Joseph Lock, Lovejoy, Mack, Makepeace, Marston, T. Mason, Messinger, Miller, Morse, P. Morton, Ezra Mudge, A. T. Newhall, Nickerson, Nichols, Oldham, T. Paige, L. M. Parker, Parkes, Perham, Pickens, Picket, A. Pierce, L. Pierce, V. Pierce, E. Phelps, M. Phelps, J. Phillips, W. Phillips, Phipps, Pomeroy, A. Porter, S. Porter, Powers, B. Pratt, N. Pratt, S. Prentiss, Prescott, Rantoul, J. Reed, S. Reed, Reeves, Reynolds, Rice, J. Richards, N. Richards, Robbins, Root, B. Russell, D. Russell, A. Sampson, E. Sampson, Sargent, Saunders, Saunderson, Savage, Scott, Sibley, B. Smith, O. Smith, Sprague, Spurr, Starkweather, Stearns, F. Stebbins, L. Stebbins, Stickney, Stone of Hardwick, Stone of Stow and Boxborough, Joseph Story, Stowell, R. Sullivan, W. Sullivan, Taft, Talbot, Taylor, Thomas, J. Thompson, J. Tilden, Tinkham, Torrey, Townsend, Trask, Trowbridge, Trull, Tuckerman, Tufts, Turner, Varnum, J. Wade, Wakefield, L. Walker, Walter, Walton, Ward, Ware, R. Webster, D. Webster, Webber, Wells, J. Welles, A. Whitney, J. Whitney, W. Whitney, S.

White, J. Whitman, D. Whitman, E. Whipple, Whitaker, N. W. Williams, Winship, Winsor, E. Wood, Wyles, Young—245.

*Nays*—J. Allyne, Almy, W. Austin, Jonathan Bacon, Bailey, Banister, E. D. Bangs, A. Bartlett, B. Bartlett, W. Bartlett, J. Bartlett, jr., Beach, J. Bond, G. Bond, Bourne, Boylston, Boyse, Bramhall, Brownell, S. Bullock, Bugbee, Cary, Chamberlain, Chandler, M. Chapin, Childs, J. Y. Clark, Collamore, Conkey, Cutler, Daggett, D. Dana, N. M. Davis, J. Davis, R. Dean, Dearborn, E. Dickenson, Dimmick, Dunbar, Dwight, B. Ellis, Endicott, Estabrook, Farwell, Fay, Fearing, Felt, S. Field, R. Field, Fish, Fiske, Fobes, Fowle, Fox, Frazer, R. Freeman, Frink, Gale, Z. Gates, Godfrey, Gray, E. Green, Gregory, Grosvenor, B. Hall, N. Hall, Harding, Heard, Hinckley, S. Hoar, Howard, S. Hubbard, E. Hubbard, W. Hunt, C. Jackson, Kemp-ton, Kent, James Keyes, John Keyes, B. Knight, Lathrop, Leach, J. Lincoln, L. Lincoln, M. Little, J. Little, John Locke, Longley, Low, J. Lyman, Martin, May, Melville, D. Mitchell, Nelson, J. Newhall, J. Noyes, N. Noyes, Olney, J. A. Parker, J. Parker, Parrott, Pearce, Pickman, Pierson, Pike, Pope, A. Porter, S. Pratt, J. Prince of Boston, Quincy, Rider, A. Richardson, J. Richardson, Joseph Richardson, J. Russell, S. Russell, Saltonstall, Sanger, Sawyer, Shaw, Shepherd, Sisson, A. Smith, Jonathan Story, Sturgis, A. Thompson, Z. Thompson, Thorndike, Thurber, C. Tilden, Tillinghast, Tyler, N. Wade, Warren, Waterman, S. A. Wells, Wheeler, Whittemore, C. White, A. Whitman, W. Whipple, Whiton, Wilde, Eliphalet Williams, S. Willard, Wingate—147.

Leave of absence was granted to Messrs. DAVIDSON of Gloucester, WALKER of Norton, HARDING of Harvard, and LEONARD of Sturbridge.

At 3 o'clock the House adjourned.

### WEDNESDAY, JANUARY 3.

The House met at half-past 9 o'clock, and attended prayers offered by the Rev. Mr. Palfrey; after which the journal of yesterday was read.

*Senate and House of Representatives.*—The House proceeded to the consideration of the unfinished business of yesterday.

The ninth resolution of the select committee on the senate and house of representatives, as reported by a committee of the whole, which provides that 2400 inhabitants shall be the mean increasing number which shall entitle a town to an additional representative, was read.

A member from West Springfield moved to amend the resolution so as to make 2000 the mean increasing number.

Mr. FREEMAN of Boston opposed the amendment, as making the ratio of increase unjust.

The amendment was negatived, and the resolution passed to a second reading.

The tenth resolution, which provides that each town containing less than 1200 inhabitants—and also all the towns and districts now united for the purpose of choosing a representative, having together less than 1200 inhabitants, shall be entitled to elect a representative every other year, was read, and passed to a second reading, without debate.

The eleventh resolution, which makes it the duty of the Legislature, at their first session after the census now taking under the authority of the United States shall be completed, to class the

towns in each county containing less than 1200 inhabitants, for the purpose of choosing representatives, was read.

Mr. LAWRENCE of Groton moved to amend by inserting after the word "completed," these words, viz., "and after every subsequent census taken as aforesaid." Mr. L. said his object was to remove any ambiguity with respect to the power of the Legislature to class the towns more than once.

The amendment was adopted, and the resolution passed to a second reading.

The twelfth resolution, which provides that when the population of any of the towns classed as before mentioned, shall amount to 1200, such town shall be entitled to elect a representative, was read, and passed to a second reading, without debate.

The thirteenth resolution, which provides that any town hereafter incorporated shall be entitled to send a representative when it shall contain 2400 inhabitants, and not before, was read, and passed to a second reading without debate.

The fourteenth resolution, which provides that the members of the house of representatives may be paid for attending the General Court out of the treasury of the Commonwealth, was read, and the amendment made in committee of the whole, changing "may" into "shall," was agreed to.

The question being upon the resolution passing to a second reading,

Mr. S. A. WELLS of Boston said that he felt compelled by a sense of duty to oppose the farther progress of the resolution. Its operation was so unequal and unjust, that he conceived it would not, if fully understood, be adopted by the Convention; and if it were adopted, he doubted whether it would be ratified by the people. This, to his mind, was a consideration that merited attention. If the people were dissatisfied with parts of the amendment, it might lead them to reject the whole. The inequality of the operation of the resolution extended to and would be felt by a very large body of the people of the Commonwealth. This inequality, both as it respects the representation of the several counties, and the proportion of the expense to be paid for its support, will be constantly increasing. He had, he said, made a statement\* of the population of the several counties, the number of representatives which that population would give to each, the number which each would be entitled to by the proposed mode of representation, and the number that each might send to the Legislature, and would have to support. He would not vouch for the perfect accuracy of the statement, but he believed it to be sufficiently correct for his purpose. By this it appeared, that the county of Suffolk is, upon its population, entitled to 14 representatives, but would have to pay for 51, making a difference of more than 37. The county of Essex, which contains 72,000 inhabitants, is, upon this population, entitled to 30 representatives, would send 32, and pay for 45; and the county of Middlesex, containing nearly 53,000 inhabitants, is enti-

\* See next page.

tled to 22; but by the mode recommended, would send 33, and pay for less than 28. Thus these two counties, between which there is a difference of nearly 20,000 of inhabitants, send nearly the same number of representatives. But the largest county will pay for 13 more than it is represented by, and the latter for 5 less than the number it may have in the Legislature. Again, the county of Worcester, which contains a population of 64,000, would be entitled to 27, but may send 41, and have to pay but for 31. Thus this county, which is less by 9000 inhabitants than Essex, will have 9 more representatives; Nantucket, which by its population is entitled to 3, will have to pay for nearly 6. This inequality exists more or less in all the counties, and the burden will be felt exclusively by the counties of Suffolk, Essex, and Nantucket, and he thought the inhabitants of those counties would not ratify the alteration proposed, if adopted by the Convention; and so manifestly unequal and unjust is the system, that he presumed those of other counties might for those reasons be induced to reject it. He therefore hoped that this part of the report would not be accepted.

Mr. MARTIN of Marblehead was in favor of the towns paying their own representatives, and opposed to the resolution on the ground of its operating unequally and unjustly upon the large towns. He said a great deal about the system of the select committee being an unjustifiable bargain.

Mr. PRESCOTT of Boston said he was fully aware that the large towns would have to contribute to the payment of the representatives of the small towns; but the house of representatives was to be reduced, and it was necessary to offer an inducement to the small towns to give up a part of their representation. It was well known that the representatives from small towns were in the habit of attending the General Court very little, so as to make a constant

## STATEMENT REFERRED TO ON PRECEDING PAGE.

| Counties.       | Population of 1810. | No. of Rep's by the agg't population of towns. | No. of Rep's by towns separately. | Taxes paid by the several counties. | No. of Rep's to be paid for by each county. |
|-----------------|---------------------|------------------------------------------------|-----------------------------------|-------------------------------------|---------------------------------------------|
| Suffolk, - - -  | 34,381              | 14                                             | 14                                | 21,022.66                           | 51½                                         |
| Essex, - - -    | 72,888              | 30                                             | 32                                | 18,421.26                           | 45½                                         |
| Middlesex, - -  | 52,789              | 22                                             | 33                                | 11,344.01                           | 27½                                         |
| Norfolk, - - -  | 36,245              | 13                                             | 18                                | 6,692.02                            | 17½                                         |
| Plymouth, - -   | 35,169              | 15                                             | 18                                | 5,930.68                            | 14½                                         |
| Bristol, - - -  | 37,168              | 16                                             | 18                                | 5,974.65                            | 14½                                         |
| Barnstable, - - | 22,211              | 9                                              | 12                                | 2,427.99                            | 5½                                          |
| Dukes, - - -    | 3,290               | 1                                              | 2                                 | 476                                 | 1½                                          |
| Nantucket, - -  | 6,807               | 3                                              | 3                                 | 2,188                               | 5½                                          |
| Worcester, - -  | 64,910              | 27                                             | 41                                | 12,749.31                           | 31½                                         |
| Hampshire, - -  | 23,545              | 10                                             | 14                                | 4,021.35                            | 9½                                          |
| Hampden, - - -  | 24,423              | 10                                             | 15                                | 3,914.66                            | 9½                                          |
| Franklin, - - - | 28,307              | 12                                             | 16                                | 4,030.66                            | 9½                                          |
| Berkshire, - -  | 35,907              | 15                                             | 21                                | 5,322.64                            | 13                                          |
|                 | 472,040             | 197                                            | 257                               | 104,515.89                          | 257                                         |

change during the session in the popular branch. Paying them out of the public treasury would ensure an attendance during the whole session, and the business would be transacted better. It was the understanding of the select committee that all the resolutions formed a system, and that if some of them were accepted, all of them ought to be.

Mr. QUINCY of Boston said, with respect to the principle of reduction, that he wished gentlemen to understand what they were doing. They were depriving towns of their right of sending their full number of representatives when any great exigency should require a large house, and were increasing the number permanently, —since, if the representatives were paid out of the public treasury, there would always be a full house. He looked to the good sense of the people to reject the system proposed.

Mr. PRINCE of Boston opposed the resolution, because it would operate very unjustly on that town, without any equivalent.

Mr. FLINT of Reading said there was not so much inequality as gentlemen seemed to suppose, in the large towns contributing to the payment of the representatives from the small towns. If a representative from a small town should attend the General Court, his services would be as beneficial as those of a representative from a large town. He would work during the whole session, for the good of the whole community, without being able to get excused, except in very urgent cases. It was therefore not so much like oppression to make the large towns contribute to the compensation for his services, as it would be to oblige the small towns to bear the whole burden. It was proper that the Commonwealth should pay for services performed for the benefit of the Commonwealth. He mentioned, as an inequality in the present system, that some towns were in the habit of sending no representatives; thus making the burden of legislation to be borne entirely by the other towns, while they derived equal benefit from the laws which were passed.

Mr. RANTOUL of Beverly said the compromise extended only to the number of representatives as an equivalent for the greater representation in the senate. He considered the present resolution as a distinct proposition. It was better to let the constitution remain on this subject as it now stands. A large part of the travel of members was now paid by Suffolk and Essex; and if it should be necessary to ensure a sufficient number of representatives to transact the business of the Commonwealth, the Legislature could provide for paying the members out of the public treasury. He was opposed to the present resolution.

Mr. AUSTIN of Boston hoped the resolution would prevail. Individuals attended the General Court to take care of the Commonwealth, and not of their particular towns, in the same manner as members of Congress act for the United States, and are paid from the public treasury. As he voted for the part of the compromise which was beneficial to the large towns, he felt compelled by a regard to something like good faith to vote in favor of the other part.

Mr. STORY of Salem said, that in point of good faith, as he had voted for the preceding resolution he was bound to vote for this one, though he was aware that the town he represented would suffer by the adoption of the whole system, in compromising with other towns. But it was necessary to reduce the number of the house of representatives. By the system now offered it never would exceed 275; whereas, by the old system, it might in a few years amount to 800. The Legislature was for the benefit of the whole State, and gentlemen from the small towns did as much as those from the large towns. He agreed that if the present system continued, they ought to be paid by the respective towns, and this from necessity, in order to check the number in the house of representatives. The small towns had made a concession, and were entitled to some equivalent.

Mr. QUINCY said he protested against the bargain proposed by the select committee.

Mr. MARTIN said this was called a bargain; it was a bargain he did not agree to. It bargained away five members from the town of Marblehead. He did not object to it because he wished to be elected. I never wish, said he, to have a seat in the house, and I am sorry to think I am here now. He was not able to follow the gentleman from Salem with all his learning and eloquence, but if he could bring forward facts to put down his arguments, it was his duty to do it. He proceeded to state in what manner the resolution, if adopted, would operate on the county of Essex, particularly on the commercial part of it, and contended that for its inequality it ought not to be adopted.

Mr. J. LITTLE of Newbury wished to know if the committee had any authority to make a bargain that should oblige the House to adopt this resolution. If they had made any such bargain it was on their own responsibility, and the House were not bound by it. Instead of diminishing the number of representatives they had increased them, and they were to be paid by taxing every town in the State. He could not agree to it, and he did not think the people would agree to it. He would not only give his voice against it, but would do all he could to prevent its being ratified.

Mr. LINCOLN said no man was more opposed than he was to the system of representation that had been adopted; he considered it unequal, oppressive, and unjust, and he meant to protest against it now and hereafter, here and elsewhere. But the House having seen fit to adopt a system which he had no part in, they were bound to make it complete. Having taken away the rights of the small towns, they were bound to pay the equivalent. The payment out of the treasury was the only equivalent, and they were bound to pay it.

Mr. PRESCOTT did not consider it in the nature of a bargain; but he did consider the whole report of the committee as a system, which was to be adopted in whole or not at all, and that it would be unjust to adopt a part of it, which might appear to be advantageous



to one part of the State, and reject another part of it, which offered an equivalent advantage to the other parts of the State.

Mr. SLOCUM said that he had much rather hear than speak, for he felt better instructed when he was listening to other gentlemen. His text was, that taxation and representation ought to go hand in hand. The representatives had frequently come forward and wished to be paid out of the public chest. They last year passed a resolve for this purpose, but it was rejected by the senate. Ought we not to hear the voice of the people? He wanted an equal taxation and an equal representation, and then he should feel happy. But it was not an equal representation, that the poor towns, which cannot pay, shall have no representatives unless they pay them. He did not see where gentlemen built their argument; it could not be on equal rights nor on equal taxation; but it must be from the ingenuity of their own brain. He should therefore vote in favor of the resolution.

Mr. KEYES of Concord was in favor of this resolution, and opposed to all the rest. He entered his protest against the system relative to the senate now, and he should protest against it hereafter.

Mr. BLAKE said that they were legislating, not about representatives of the towns, but about representatives of the people of Massachusetts. Ought not the people of the Commonwealth to pay their own servants and agents? He did not support the resolution on the ground of a compromise, but on the ground that it was a provision perfectly consonant to sound principle.

Mr. LAWRENCE protested against the remarks from various parts of the House, proceeding from the idea that any rights were intended to be bargained away. There was nothing in the resolution by which the interests of the Commonwealth, or the honor of the towns was to be compromised. The committee considered it a settled principle that the number of representatives should be reduced, so that the members might be paid out of the public chest—this could be done only by districting, or in the present mode. This mode had been preferred by the House—every one acquainted with the course of business in the house of representatives knew, that under the present organization a great part of the members did not remain in their seats long enough to render any service. They went home early in the session to save their towns from the burden of paying for their attendance, and left the business to be transacted by the representatives of a few towns. This occasioned great uneasiness, and the difficulty could never be remedied but by paying the members out of the public treasury.

Mr. HOYT said that the town which he represented would be deprived of half its representation, and be obliged to pay for double what it is entitled to. But he was in favor of the resolution, because he thought it would be for the benefit of the Commonwealth.

Mr. LOCKE said that one of the first abstract principles decided by the select committee, was that representatives should be paid

out of the public chest. This was before any plan of representation was matured, and was agreed to almost unanimously. They were considered as agents of the whole Commonwealth; otherwise it would be improper to fine towns for neglecting to send representatives.

Mr. BANISTER considered it to be his duty to his constituents, as well as his right, to express his objections to this resolution. He agreed that the expenses of legislation ought to be borne by the whole State, but there ought to be some equality between representation and taxation. If the system would effect the object of reducing the representation and the expenses of government, he should be more reconciled to it. But it would have the effect to increase the representation and the expenses of government as well as to increase the inequality of burdens on the community. He stated several other objections to the operation of it generally, and explained its unjust operation on the county of Essex, particularly compared with all the other counties. He said that Essex would lose from five to ten members compared with every county except Suffolk and Nantucket; and that all the counties would gain except Suffolk, Essex and Plymouth. He did not believe that the people would agree to it.

Mr. PARKER of Charlestown said he opposed the resolution respecting the senate, but as they had been accepted, this was the only counterpart. The senate was to be formed upon valuation and the house of representatives upon corporate rights. Neither of these was a representation of the people, and the majority of the people might be governed in both branches by a minority of the people. He held that living, moving, acting, intelligent beings were the only proper basis for both branches; but as a different one had been adopted for the senate he should vote for this resolution.

Mr. TILLINGHAST of Wrentham said he washed his hands of the compromise. He had uniformly opposed it, but this resolution should go with the others which had been adopted and he should vote in favor of it.

The previous question was moved and decided in the affirmative.

A motion to take the question by yeas and nays was lost—40 out of 349 voting in favor.

The question was then taken for the resolution passing to a second reading, and decided in the affirmative—283 to 65.

The fifteenth resolution, fixing the quorum of the house of representatives at 100—the sixteenth, giving the representatives privilege from arrest on mesne process, warrant of distress, or execution during their going unto, returning from, or attending the General Court—and the seventeenth giving the same privilege to the senators, were severally read and passed to a second reading without debate.

The resolution offered by Mr. PRESCOTT and agreed to by a committee of the whole, providing that all the towns shall be entitled to send a representative on the year when a valuation shall be settled, and that any two adjoining towns being in the same class and being

desirous of belonging to different classes may be so classed upon application to the Legislature, was read.

Mr. STURGIS of Boston moved as an amendment that the towns should pay their representatives on that year. Negatived.

A division of the question was called for. The question then being upon the first branch of the resolution, some debate followed, in which Messrs. DWIGHT, PRESCOTT, PAGE, HOYT and VARNUM took part, respecting the year in which this full representation should be had, on account of the time necessary to complete a valuation.

Mr. BOND moved to postpone the consideration of the subject indefinitely. Negatived.

The first part of the resolution then passed to a second reading, and on motion of Mr. PAIGE, of Hardwick, was referred in the meantime to a select committee. Messrs. PRESCOTT, VARNUM, PAIGE, HOYT and STURGIS were appointed on the committee.

The other part of the resolution passed to a second reading and was in the mean time referred to the same committee.

To-morrow, at 10 o'clock, was assigned for the second reading of the various resolutions before mentioned.

On motion of Mr. PRESCOTT the House went into committee of the whole on the resolution submitted by him for limiting the number of representatives, Mr. VARNUM in the chair.

Mr. PRESCOTT said that from the best computation he could make, the number of representatives by the census of 1810, would be from 250 to 260. By that of 1820 it may be 270. A strong wish had been expressed from various parts of the house that they should not be increased far above this number. To prevent any increase above 275 he had proposed this resolution. He proceeded to explain the operation of the resolution.

Mr. BOND was opposed to the resolution. If he understood the effect of it, it would tend to increase the inequality of the system as it was now adopted. The mean increasing number was to be increased in proportion to the increase of population in the Commonwealth, and this would increase the inequality in favor of the small towns.

The question was taken without further debate, and the resolution agreed to—200 to 36.

The committee rose and reported.

The resolution was then read the first time in Convention and passed, and ordered to a second reading to-morrow at 10 o'clock.

On motion of Mr. STURGIS, the committee on the pay roll was directed to make it up, including Monday next.

The resolution reported by Mr. DANA as chairman of a select committee, that every male citizen twenty-one years of age and upwards (except paupers) who has resided in any town six months previous to an election for civil officers, and who shall have paid by himself or his parent, &c., a public tax assessed within two years preceding, shall have a right to vote at such election, was read.

Mr. SULLIVAN of Boston moved an indefinite postponement. Negatived.

Mr. VARNUM moved to amend by inserting after "paupers" the words "and persons under guardianship." The amendment was adopted.

Mr. SULLIVAN moved to amend so as to enable persons to vote who shall be exempted by law from taxation.

The amendment was agreed to—215 to 25.

Mr. LELAND of Roxbury moved to amend so as to require the tax to be assessed in some town in the Commonwealth.

Mr. LINCOLN, with the same view, suggested that the insertion of the word "therein" would answer the purpose.

This amendment was accordingly adopted.

Mr. LOCKE without intending to alter the sense, moved to amend so that it should read, "who shall have paid or for whom any parent, guardian, &c., shall have paid," &c.

This motion was withdrawn upon a suggestion that the committee for reducing the propositions to form, would have power to make the alteration desired.

After a slight debate the resolution passed to a second reading to-morrow at 10 o'clock.

On motion of Mr. ALVORD of Greenfield the resolution offered by Mr. PRESCOTT, which had been discussed in committee of the whole and disagreed to, providing that two towns containing each less than 1200 inhabitants, might unite for the purpose of choosing a representative every year, was read. After debate, in which Messrs. ALVORD, DANA, NEWHALL, PRESCOTT, STURGIS and J. BALDWIN spoke in favor of the principle, and Mr. FRAZER against it, the Convention disagreed to the report of the committee of the whole. The resolution passed to a second reading to-morrow at 10 o'clock, and was committed in the mean time to the same select committee to whom the other resolutions connected with this subject were committed.

A resolution was offered that it is expedient to alter the constitution so as to provide that printed ballots may be used at elections.

Mr. DEARBORN of Roxbury said this question was discussed in the select committee on the senate, &c., and it was thought inexpedient to make the alteration, as printed votes would be liable to be abused by making caricatures and other things of that sort upon them.

A motion to commit the resolution to a committee of the whole was negatived.

On motion of Mr. STORY the Convention proceeded to the second reading of the resolution relating to the judiciary.

The first resolution as amended was read.

Mr. CHILDS said he thought that by adopting the amendment, the intention of the provision for removal of judges by address of the two houses would be done away. It placed this proceeding on the footing of impeachment, and it might as well be struck out. The object in giving the power to the Legislature was, that judges might be removed when it was the universal sentiment of the community

that they were disqualified for the office, although he could not be convicted on impeachment. He hoped that this part of the constitution would be suffered to remain unaltered.

Mr. AUSTIN of Boston thought the alteration was unnecessary, and might be mischievous. No injury had arisen under the provision. There had been unpopular decisions of the courts, which affected the great mass of the people, and produced great sensation, but they were cheerfully submitted to, and no harm came to the judges. They were secured by a strong popular feeling—a moral restraint—a good feeling on the part of the enlightened community, which placed them above danger from any popular excitement. It had been suggested that it might become an object to individuals of influence to obtain the office of judge. Such an attempt could not succeed. The man who would solicit the office, and would attempt to turn out the incumbent to obtain his place, would not retain the countenance and support of any party. By the constitution, judges, like all other officers, are subjected to punishment for great crimes by impeachment. Nobody objects to this provision. The house of representatives is the grand inquest—they are tried by the senate and have the right of being heard. But the constitution admits that there may be cases in which judges may be removed without supposing a crime. But how is it to be done by this resolution?—there are to be two trials, when for the greater charge of a high crime he has only one. It so obstructs the course of proceeding that it will never be used. He would suppose the case not of mental disability—but the loss of public confidence. He knew that such cases were not to be anticipated. But he would look to times when the principle might be brought into operation—when the judge by indulging strong party feelings, or from any other cause, should so far have lost the confidence of the community that his usefulness should be destroyed. He ought in such case to be removed, but if witnesses were to be summoned to prove specific charges, it would be impossible to remove him. A man may do a vast deal of mischief and yet evade the penalty of the law—a judge may act in such a manner that an intelligent community may think their rights in danger, and yet commit no offence against any written or unwritten law. Men are more likely to act in such manner as to render themselves unworthy to be trusted, than so as to subject themselves to trial. The great argument for the amendment is, that it is necessary to secure the independence of the judiciary. He was in favor of the principle, but it had its limitations. While we secure the independence of the judges, we should remember that they are but men, and sometimes mere partisans. He had heard of men being elevated to high judicial stations, not because they were the most able and the most learned, but because they stood in the front ranks of their party. They are but men, and ought not to be above responsibility. It was urged as a reason for their entire independence, that they are called on to decide on the constitutionality of acts of the Legislature. He admitted that they had this right and

that it was an indispensable check on the Legislature. But was there to be no check on the judiciary; were they elevated to an atmosphere in which they would have none of the prejudices and strong feelings of other men? This power of removal was the necessary check on the judiciary. It was urged that the judiciary ought to be supported because it was the feeblest of the three departments of the government. He was astonished to hear this argument. He had considered it the strongest. It was the strongest from the duration of the office of the judges; from the power they exercise, a power which comes home to men's business and bosoms. A man might bear for a little while with tyrannical laws, and a tyrannical executive, but no man could bear a judiciary power that was not honest and upright, however distinguished by learning. The court were besides attended by a splendid and powerful retinue—the bar. They have great influence from their talents, learning, and esprit du corps, and as an appendage to the court they give them a great and able support. He did not admit that the judiciary was a weak branch of the government, but on the contrary it was a strong branch. We had been told that the best experience was our own experience. This had been in favor of the principle as it stands in the constitution. It was also the English principle, which was considered the best organized judiciary that humanity would permit. It was not that of the constitution of the United States, but the nature of the government was different. These were his general reasons for opposing this innovation on the constitution.

Mr. PRINCE of Boston said that after the decided majority of this House in favor of the resolution which he had had the honor to submit, he had not expected to hear it called "mischievous provision." He considered the independence of the judiciary the key stone of our republican institutions. He thought the single admission of the gentleman last speaking, that the judges have power to declare an act of the Legislature unconstitutional, furnished a sufficient argument against leaving it to the will of a majority of the Legislature to remove them from office; for the exercise of this power in relation to a favorite law, would be sure to lead to a resolve for their removal. As the judges are men of the first respectability, proverbial for their integrity and unblemished character, they ought to receive as much attention, and be indulged with the same right of being heard which is extended to the most unfortunate class of our fellow-citizens.

Mr. STORY was aware of the impatience of the House, and he would not rise if there were not some circumstances which he thought rendered it indispensable he should say a few words on this question. Circumstances in the order of providence had rendered it necessary that he should be absent at the time when the report of the select committee was under discussion. It was his misfortune also to be absent when the gentleman who last spoke against the amendment had seen fit on a former occasion to make an allusion to him personally, in terms so distinct that they could not be mis-

understood. He wished the gentleman to know that he understood the allusion, but he did not mean to reply. He wished it to be understood that in entering this house he deposited at the door every feeling of private interest or resentment, and he regretted that any gentleman should think it his duty in debate to make a personal allusion, when the individual alluded to, was not present. He should be still more sorry if any gentleman should permit his mind to be so disturbed by private resentments as to permit the constitution to be stained by a provision growing out of those resentments. He would not decline at a proper time and in a fit place attempting to defend the little reputation he had—it was what he had a right to defend and he ought to defend, but this was not the place. He wished in that house to be considered without regard to his official station, and as standing in a capacity entirely distinct from the character of the judge. The report of the select committee proposed to substitute for “a majority” of each house, required to unite in an address for the removal of a judicial officer, “two thirds.” The object of the amendment was to secure the judges from a temporary excitement, operating on the Legislature. It was not to protect them against the people, but against the representatives of the people. But the House had overruled the proposition, and he should make no objection to it. He should always submit cheerfully to the decision of the House, though it should be opposed to his own opinion. The able argument that had been addressed to the House against the amendment of the committee of the whole, for he could listen to an argument against him, though he did not always experience the same indulgence, all went to show that the judges ought not to be liable to removal by a bare majority of the two houses of the Legislature. It was said that the judges should hold their offices during good behavior—the terms were so in the constitution—but while another clause of the constitution remained, the fact was not so. The governor and council might remove them on the address of a majority of the Legislature, not for crimes and misdemeanors, for that was provided for in another manner, but for no cause whatever—no reason was to be given. A powerful individual, who has a cause in court which he is unwilling to trust to an upright judge, may, if he has influence enough to excite a momentary prejudice, and command a majority of the Legislature, obtain his removal. He does not hold the office by the tenure of good behavior, but at the will of a majority of the Legislature, and they are not bound to assign any reason for the exercise of their power. *Sic volo, sic jubeo, stet pro ratione voluntas.* This is the provision of the constitution, and it is only guarded by the good sense of the people. He had no fear of the voice of the people when he could get their deliberate voice—but he did fear from the Legislature, if the judge has no right to be heard. It was said we had had good judges under this provision, and that they had not been removed. He admitted it—he apprehended no evil for the present—but begged gentlemen not to deceive themselves—the

first instance of removal would establish a practice which would never be departed from, of shifting the whole court with every change of the party in power. Why had this evil never yet been felt? He did not wish to allude to parties that had existed, but he must allude to facts. For forty years past it had so happened that the judges had, except for a few years, always agreed with the party in power. It was not when they were of the same opinions of the majority of the Legislature that there was any danger, but when they were with the minority. It is always the great object of the majority to weaken the minority, and this provision puts it in the power of the majority to remove every judge opposed to them. It is the minority who are interested in the independence of the judges. Is there no danger that if they are made dependent on the will of the majority, they will be complaisant to that majority at the expense of the minority? that the right of the poor man will be in danger, when opposed to the interests of the powerful man in the majority? He referred to the example of a neighboring state, in which three whole benches of judges had been removed in the space of three or four years; and to the experience of certain other states, (not within this circuit,) where, from the dependence of the judges, justice is not impartially administered, and, in consequence, instances have frequently happened of citizens being obliged to escape to a neighboring state, to give them a right to the courts of the United States. Was the provision adopted in committee of the whole unreasonable? The bill of rights secures to every subject, however humble, the privilege of not being held to answer for any offence until it has been fully and plainly described to him—and the right to produce proof in his defence—to meet the witnesses against him face to face—and to be fully heard in his defence by himself or his council. The rights of the humblest citizen cannot be touched without giving him the opportunity to hear the charge and to make his defence, and should this right be denied to the judge? It might be said that it was not his property, or liberty or life that was in question—but it was something dearer—it was character. If this was to be taken away, let it be done openly—if they must perish, let it be in the face of day, and in the presence of those who attack. Let not the reputation of the judge, who has spent his whole life in labor and study, whose youth and old age has been devoted to the public service, be taken away at the beck of a popular demagogue, and not let his children have the means of knowing the cause, which they who do the injury would blush to tell. After a single removal had been made, no man worthy of the place would accept the charge. He considered it a matter of immense importance that the judges should be independent. A republican government can never subsist without it; but while the judiciary is independent, the republic can never be in danger, and those who would destroy it must undermine not only the public confidence in the judiciary but the tenure of office. There had been an allusion to the practice of England. Mr. S.



proceeded to give the history of the act of William III, by which the judges of the courts of England are removable only by address of the two houses of parliament, and before which they were dependent on the will of the king; and to show that the object of the act was not to give power to parliament to remove the judges, but to induce the king, by a compromise, to give up a greater right. Since this act, which was one of the most valuable fruits of the revolution, the courts of England had stood in an attitude which commanded the admiration of the whole world. He alluded to the recent trial of the queen in England, to show the value of an exhibition of specific charges and a public hearing, and asked whether, if the green bag had been opened before a secret committee, it could be supposed there would have been the same result. There was not a man in England bold enough to say that the queen, whether guilty or not, should be unqueened without being heard. And should we in this republican government suffer men, holding the highest stations in society, to be removed from their offices, with the loss of reputation, without even knowing the cause of their removal? He considered it indispensable to preserve their independence, not only with reference to their own rights, but with reference to the rights of the minority and the rights of the people. The amendment agreed to in committee of the whole afforded but a reasonable security for this independence, and he trusted it would be suffered to become a part of the constitution.

Mr. AUSTIN moved that the House adjourn—Negatived.

Mr. STURGIS called for the previous question, which was put and carried.

The question was then taken on the resolution and it passed—221 to 3.

The other resolutions relating to the judiciary, were read and passed.

Leave of absence was granted to Messrs. RICE of Marlborough, LEONARD of Taunton, BLISS of Wilbraham, TRASK of Brimfield, FOWLER and TAYLOR of Westfield, BOURNE of Wareham, NEWHALL of Attleborough, and GIFFORD of Westport.

The House adjourned.

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#### THURSDAY, JANUARY 4.

The House was called to order at twenty minutes before 10 o'clock, and attended prayers by the Rev. Mr. Palfrey. The journal of yesterday was then read.

Mr. JACKSON of Boston, chairman of the committee for reducing amendments into form, reported several resolutions respecting the manner in which the amendments should be submitted to the people.

Mr. JACKSON said the resolutions were the same in substance and differed very little in words from the resolutions formerly reported

by him on the same subject ; and which we have before given in the proceedings of December 6th. In conformity to an order of the Convention passed on Monday last, he also reported some amendments reduced to form, in relation to the subjects referred to the standing committees on oaths, subscriptions, &c., on the secretary, treasurer, &c., and on the governor, militia, &c. As we have already given the substance of these amendments as they were from time to time adopted by the Convention, we shall defer publishing them again until all the amendments shall be agreed upon and reduced to form ; in order that we may present them all at the same time, accompanied with the resolutions before mentioned reported to-day by Mr. JACKSON.

Mr. QUINCY wished the resolutions might lie on the table, to give gentlemen an opportunity to examine them. They contained one provision, which appeared to him to be objectionable, for appointing a committee of the Convention to meet and examine the returns of votes given by the people upon the amendments. He doubted the power of the Convention to appoint such a committee. The governor and council were the proper persons for examining the returns ; they were responsible persons. A committee of the Convention, though they might act fairly and honorably, would not be responsible to anybody after the Convention was dissolved.

Mr. QUINCY offered a resolution that in taking the yeas and nays the name of no person who had had leave of absence should be called, unless he first surrendered his leave of absence. Laid on the table.

Mr. PRESCOTT of Boston, chairman of the select committee to whom the resolution respecting the small towns being represented on the year when a valuation is to be settled, and another resolution respecting small towns uniting to choose a representative every year, were yesterday committed after the first reading, reported the former resolution without any amendment, and the latter in a new draft.

Mr. WEBSTER of Boston, chairman of the committee to whom the subject was committed, made the following report, viz.:

IN CONVENTION, JANUARY, 4, 1821.

The committee appointed to inquire into and report upon the *Constitutional Rights and Privileges of the Corporation of Harvard College* ; and to report also an account of the donations which have been made to that corporation by the Commonwealth ; ask leave now to report :

That, in the year one thousand six hundred and thirty-six, the General Court of the Colony agreed to appropriate £400 towards a school or college. In the year following, it was ordered that an edifice should be erected for that purpose at Newton, and twelve gentlemen were appointed a committee to have charge of the subject. In 1638, the name of Newton was changed to that of Cambridge ; and it was ordered that the College to be erected at Cambridge, should be called Harvard College, in honor of the Rev. John Harvard of Charlestown, who had contributed liberally to the fund. And in 1640, the Rev. Henry Dunster was appointed first president. At this time the property appropriated to the support of the College, by the General Court, had not been vested in any person whatever. It remained the property of the Colony, and was managed by a committee of the General Court, or by the magistrates and elders, by authority of the General Court. This being found an inconvenient mode

of administering the fund, an act was passed in 1642, by which the governor, deputy governor and magistrates, and the teaching elders of the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury and Dorchester, together with the president of the College, were constituted a board of overseers, with power to make orders, statutes, and constitutions for the rule and government of the College, and to manage and dispose of its lands and revenues. The fund remained in this situation until the year 1650, when the General Court on the application of the president granted a charter, by which seven persons, to wit, the president of the College and the treasurer, *ex-officio*, and five individuals by name, were constituted a corporation, by the name of the "President and Fellows of Harvard College," to have perpetual succession, and with power to fill vacancies, occurring in their own body, by their own election, with the consent of the overseers. All powers of government, the whole management and control of the property and funds, and direction and instruction of the students, appear by this charter to have been conferred on the president and fellows; with a provision, however, that the acts of the corporation should not take effect until the approbation or assent of the overseers was obtained.

It appears soon to have been found that a great inconvenience arose from holding all orders, by-laws and acts of the corporation in suspense, until the pleasure of the overseers could be known; and on *that* account, on the application of the overseers, a supplemental charter was granted, in 1657, by which all orders, by-laws and other acts of the president and fellows were to have immediate force and effect; subject, however, to be reversed or rescinded by the overseers, if they should not approve them. By these charters, all the property, appertaining to the College, became vested in the president and fellows, for the purposes of the institution; and all powers of superintendence and control were in like manner conferred on them, subject, as before mentioned, to the approbation or disapprobation of the overseers. The government of the colony was the founder of this institution; not in consequence of having granted the charter, but in consequence of having made the first endowment. As founder, it was entirely competent to the government to prescribe the terms of the charter, to grant the property, subject to such limitations as it saw fit, and to vest the power of visitation and control, wherever it judged most expedient. This power, the government thought proper to vest, to the extent and in the manner before mentioned, in the board of overseers; and subsequent donors had a right, of course, to expect that donations, made by them, would be managed, and applied to their intended objects, by the College government, thus constituted, without substantial variation. Between the year 1657, (the date of the supplemental charter) and the time of the provincial charter of William and Mary, sundry alterations were proposed in the charter of the College; such as, among other things, to give to the College government civil jurisdiction in certain cases, after the manner adopted in other institutions. None of these alterations, however, took place. By the provincial charter, in 1691, the crown of England confirmed to the College, as well as to other bodies, corporate and politic, all its property, powers, rights, privileges and immunities. At subsequent periods, attempts were again made, for further alterations of the charter, but without success.

By the present constitution of the Commonwealth, adopted in 1780, it is well known, all the powers, authorities, rights, liberties, and immunities of the College were expressly confirmed; and all gifts, devises and legacies, made or given to it, declared to be forever bound and applied to their respective purposes, according to the will of the donors. And, inasmuch as the revolution and the establishment of a new government had made it necessary to declare who should be deemed successors to those persons who, under the old government, had been, *ex-officio*, members of the board of overseers, it was declared that the governor, lieutenant governor, council and senate, should be such successors; and that they, with the president of the College, and the ministers of the Congregational churches, in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury and Dorchester, should constitute the board of overseers; with a provision, that the Legislature might, nevertheless, for the advantage of the College and the interest of letters, make alterations in its government, in the same manner as they might have been made by the provincial Legislature. In the constitution of the corporation no change has been made since the date of the first charter; but within the last ten years, several laws have passed, having for their object modifications of the constitution of the board of overseers. Some of these laws have passed with the assent, and on the application of the corporation and board of overseers; and one of them has passed without the previous consent of either. The last law on this subject is the act of February, 1814, which passed with an ex-

press provision, that its validity should depend on the assent of the board of overseers, and of the corporation. Both of these bodies assented to, and accepted this act, and the present actual government of the College is conformable to its provisions. It may be useful to state here, how the government of the College is at present formed and constituted, under this law.

In the first place then, the corporation, as before mentioned, exists in the form prescribed by the first charter.

It consists of seven members; it invests the revenues, protects the property, and has the immediate charge of the interests of the College; and it appoints professors, tutors, and other officers; subject, however, in all these appointments, to the approbation or disapprobation of the board of overseers. The board of overseers is composed of the governor, lieutenant governor, council, senate, speaker of the house of representatives, and president of the College, together with fifteen ministers of Congregational churches, and fifteen laymen, all inhabitants within this State, elected, and to be elected, as vacancies occur, by the board itself. If the contemplated arrangement, as to the number of senators and counsellors hereafter to be chosen in the State, shall take place, this board will consist of SEVENTY SEVEN members; of whom forty-six will be such persons as shall be annually chosen by the people, into the offices of governor, lieutenant governor, counsellors, senators, and speaker of the house of representatives; and thirty other persons, such as these officers, being themselves a majority of the board, shall, with the other members, see fit, from time to time, to elect, to fill the vacancies which may occur.

Such is the existing constitution of the government of this institution; and, with one exception, hereafter to be mentioned, the committee are of opinion that it is a well contrived and useful form of government. The corporation consists of but few persons; they can, therefore, assemble frequently, and with facility, for the transaction of business, either regular or occasional. The board of overseers, having a negative on the more important acts of the corporation, is a large and popular body, a great majority of its members being such as are annually elected to places of the highest trust in the government by the people themselves. A more effectual control, over the proceedings of the corporation, cannot be desired.

Indeed if a new government were now to be framed, for an University independent of all considerations of existing rights and privileges, the committee do not know that a better system could probably be devised. The history and present state of the institution speak the most decisively, as well on the plan of its government, as on its administration. As to the care and management of the funds, it is believed to have been cautious and exact, in a very high degree. No delinquency, to the amount of a single shilling, is known to have existed in any member of the corporation, or any of their agents or servants, from the time of the first donation, in sixteen hundred and thirty-six, to the present moment.

How far this government of the University has been found competent to conduct its literary concerns, and to what respectability and distinction, among the institutions of the country, it has raised it, neither the members of this Convention, nor the citizens of this Commonwealth, nor the people of the United States, need be informed.

The exception before alluded to, is that, by which the clergymen, composing part of the board of overseers, are to be elected from Christians of a particular denomination. However expedient, or indeed however necessary, this might have been originally, the committee are of opinion that no injury would arise from removing the limitation, and that such a measure would be satisfactory. It seems to have been taken for granted, that the Legislature, with the consent of the corporation and overseers, had power to modify the constitution of the board of overseers, in the manner prescribed by the act of 1814. In the opinion of the committee, however, modifications of the government of this most important institution should not rest merely on the authority of legislative acts. Those who formed the constitution in 1780, appear to have deemed the subject of such high importance as to require constitutional provisions, and the committee are of opinion that that precedent is fit to be followed. They have, therefore, deemed it proper to recommend to the Convention to propose an article to the constitution, removing the restriction before mentioned, and confirming, in all other respects, the existing constitution of the College. Having communicated this opinion to the corporation, and to the board of overseers, both these bodies have signified their consent to such an article; as may be seen by their votes, certified copies of which accompany this report.

The committee have no further remarks to make on the constitutional rights and

privileges of the College, except that, like all other charities, it is under the dominion and control of the law. All officers and servants of any institutions, whether established for the purpose of religion, or learning, or the relief of the indigent, are answerable for a strict and faithful execution of their trust. And any individual, who may be injured, has his remedy, as promptly as in other cases of injury. Or if any abuse, or perversion of the funds, be known or suspected, a full account may be called for, and ample justice administered, in the tribunals of the country. The committee make this remark, in order that there need exist no jealousy in the public towards any charitable institutions in the State, arising from an apprehension that there is, or can be, any immunity in such institutions, for mal-administration, any concealment of their transactions, any unseen or unknown mismanagement of their property, or any exemption from a full and perfect legal responsibility for all their conduct.

The committee now proceed to the second object of their appointment; which was to obtain an account of the donations which have been made to the College, by the Commonwealth; and although not within the letter of their instructions, the committee have thought fit to inquire into those other aids, besides immediate donations, which the College has received from the State; and also into the proportion which the public grants bear to private and individual donations.

The committee, in making this inquiry, have conferred with the president, the treasurer, and another member of the corporation, as a committee of that board, attending at the request of the committee; and from these gentlemen have received all the information which they have requested.

As has been already observed, the Colony gave £400, for the first endowment of the institution. In 1640, it granted to the College the right of keeping a ferry over Charles river. For many years this privilege was of little importance, not yielding a net income of more than twelve pounds annually; it gradually increased, however, and was of so much consequence, when Charlestown bridge was erected in 1786, that the proprietors of that bridge became bound, in their charter, to pay the College £200, annually, for the loss of their ferry. Two other bridges, more recently erected over the same river, for a similar reason, pay to the College each, the sum of one hundred pounds annually.

In addition to this grant of the ferry, which, as has been before observed, was of little importance in early times, the General Court of the Colony was in the practice of making annual grants, in aid of the College, and to assist in the payment of the salaries of the president, professors and tutors. This practice was long continued, and did not entirely cease until after the revolution. These sums being given to maintain the College from year to year were of course appropriated and exhausted as fast as they were received; and no fund, consequently, was ever produced by them.

Before the revolution, certain lands, in Maine, were given to the College by the General Court, from which it has realized eight thousand dollars, and does not expect to receive above seven thousand more. Massachusetts Hall was built by the Province in 1723; Hollis Hall in 1763; and on the burning of Harvard Hall, while in possession of the General Court in 1765, it was rebuilt at the public expense. Holworthy Hall and Stoughton Hall were built principally by the proceeds of lotteries, authorized by the Legislature, but managed and conducted at the expense and risk of the College. In 1814, on the petition of the College, the Legislature granted it ten thousand dollars a year, for ten years, out of the proceeds of the tax on banks. Three objects were intended to be answered by the application for, and reception of, this liberal and munificent grant. The College had undertaken to build University Hall, an edifice which it deemed necessary and essential, but the cost of which pressed hard upon its funds. The first object of the grant was, to pay the expense of this building. It was desirable, also, that there should be a building erected for the use of the Medical school; and, lastly, a fund was wanted for charitable support of necessitous young men of merit, the sons of poor parents, who, without the aid of charity, could not go through a course of education; and in whose possession of the means of knowledge, the State supposed itself to have an interest. University Hall and the Medical College have accordingly been built; and that part of the annual grant (one quarter of the whole) which was destined to purposes of charity, has been so applied.

Six years of the ten have now expired, and University Hall having been built at an expense of sixty-five thousand dollars, and the Medical College at an expense of about twenty thousand dollars, and one quarter part of the grant being, as before mentioned, appropriated to the use of necessitous scholars, when the four remaining years shall have expired, the College will have invested and applied the whole

amount of the grant, with ten thousand dollars of its own funds, to the purposes for which the grant was made. The committee have inquired particularly into the manner in which this charity is distributed, and they think it wise, impartial and efficacious. In the first place, it is given to none but those who apply for it, and who clearly show, by proofs from their instructors, their ministers, the selectmen of their town, or otherwise, that they and their friends are necessitous, and unable to supply the means of education. In the next place, it is required that they should be persons of fair character and good behavior; and when it is ascertained that the applicant possesses a fair character, and that he is necessitous, he is admitted to partake in the benefit. The scale of merit kept by the instructors of the classes, is then referred to, and among those who are thus necessitous and of fair character, such as give most proof of talent and promise receive most; those who give less, receive less. It may be added, that this charity is confined to young men of this State. The committee do not know how a plan could be devised more likely to give effect to the intention of the Legislature. This donation, by the act of 1814, is the only direct grant of money, by the State, since the year 1786.

In order to compare the amount of donations made by the State with that of donations by individuals, the committee have proceeded to inquire into the origin of the College funds, generally; and have received on this subject, also, from the corporation, all the information desired.

The amount of all the personal property holden by the College, and yielding an income, does not exceed three hundred thousand dollars. Of this, more than two hundred thousand dollars consist of donations made by individuals to specific and particular objects; so that over this part of the funds, the corporation has no other control whatever, than to apply the annual proceeds thereof according to the will of the donor.

A munificent individual, for instance, chooses to establish a professorship, in any branch of literature, and for this purpose makes a donation to the College, and in his deed or other instrument of gift, limits the application of the proceeds of the fund to this particular object. In such case the corporation has nothing to do, but to see the fund properly invested and secured, and that a fit person be appointed professor, to receive the income of it for his support. So of funds given to aid poor scholars, to augment the library, and other similar objects.

Of the remainder of the personal property, a considerable portion, viz. about eighteen thousand dollars, arises from private donations, for objects not immediately connected with the College; such as the maintenance of missionaries, and in one instance, of a grammar school. The general unappropriate fund of the College, vested in personal property, yielding an income, deducting some debts now chargeable upon it, is fifty-five thousand dollars. The real estates of the College, except the public edifices before mentioned, are derived principally from the donations of individuals; but partly from purchases made from the College funds. The whole income of its real estates, including what it receives from the proprietors of the several bridges, amounts to five thousand dollars annually; of which one thousand is appropriated to specific objects by the donors. The sums received from students, as rents for the apartments occupied by them, are usually absorbed in the repairs of the various College buildings. The income of that part of the personal property, which is not appropriated to specific objects, and of that part of the real estate, in like manner, not appropriated to specific objects, constitutes the general disposable income of the College, applicable to its general purposes; such as paying the instructors and officers, defraying occasional expenses, and making up, in some cases, a deficiency in a particular specific donation, so that the object of the donor may be effected, and the public enabled to receive the benefit of his gift.

The amount of this general disposable income still falls so far short of its object, that a large sum is necessarily raised by tuition fees. The whole annual expenditure of the College, including all the general specific objects, is, at this time, about thirty thousand dollars, of which seventeen thousand are paid by the proceeds of College funds, general and specific, and the residue by tuition fees, and other charges on the students. The president, twenty professors in the several departments of science, literature, divinity, law and medicine; six tutors, the librarian, steward and other officers, are paid out of these receipts; as also the expense of books for the library, apparatus for the philosophical and chemical departments, and other daily expenses incident to such an institution. The accounts of the treasurer, of the receipt and

disbursement of the moneys of the institution, are, from time to time, audited by a committee of the corporation, and also by a committee of the board of overseers.

From this account of the state of the funds, it is evident that the establishment of the institution, on the present enlarged plan, is not, and cannot be kept up, but by the help of tuition fees. And donations and additions to the general and disposable funds of the College, would be highly useful to the public, as they would diminish the necessary expense of education.

In pursuance of the opinion formed by the committee on that part of the subject committed to them, which respects the constitutional rights and privileges of the College, they recommend the adoption of the following resolution, viz.:

*Resolved*, That it is proper to amend the constitution, by providing that the rights and privileges of the president and fellows of Harvard College, and the charter and constitution thereof, and of the board of overseers as at present established by law, be confirmed; with this further provision, viz., that the board of overseers, in the election of ministers of churches to be members of said board, shall not be confined to ministers of churches of any particular denomination of Christians.

For the Committee,

D. WEBSTER.

On motion of Mr. WEBSTER, it was ordered that the report be referred to a committee of the whole, and be printed.

Mr. QUINCY moved that three times the usual number of copies be printed, in order that the report may be circulated. Ordered.

Mr. LEACH of Easton offered a resolution proposing that hereafter no bank should be incorporated, nor the charter of any one be renewed, without making the stockholders liable in their individual capacity. Laid on the table.

The Convention proceeded to the second reading of the resolutions respecting the senate and house of representatives.

The first resolution of the select committee, which provides that the senate shall consist of thirty-six senators, being read,

Mr. ALVORD of Greenfield moved to amend by adding that they should be chosen in districts 'as nearly as practicable in proportion to the taxes paid by the several districts, except that no district shall choose more than six senators. Mr. A. said his object was to prevent any ambiguity.

Mr. LAWRENCE of Groton opposed the amendment. No question could arise on the subject, and the amendment was unnecessary.

The amendment was negatived and the resolution passed.

The six succeeding resolutions were severally read and passed.

The eighth resolution being read,

Mr. GIFFORD of Westport moved to amend it so as to make 1500 inhabitants, instead of 1200, the number sufficient to entitle a town to send a representative every year, and 2500, instead of 2400, the number sufficient to entitle a town to send an additional representative. Mr. G. stated some particulars of the operation of these numbers on the representation on the several counties. He said the operation would be more equal than that of the other numbers—that the house of representatives would be reduced still further, so as not to exceed two hundred and fourteen, and that from \$5000 to \$10,000 would be saved in the annual expense of representation.

Mr. RANTOUL of Beverly supported the amendment, proposing however to make 3000 the increasing number. He said the operation would be more equal, particularly on the county of Essex, and

the house would be still farther reduced ; which many gentlemen seemed to think desirable.

Mr. BEACH of Gloucester opposed the amendment. He said he should be sorry to disturb the harmony of the admirable and well digested plan of the select committee, which operates so equally, throughout the Commonwealth, and particularly upon the county of Essex.

The amendment was negatived—83 to 18.

Mr. MARTIN said he should vote for the amendment because it was better than the resolution of the select committee, but he preferred the old system.

Mr. FRAZER of Duxbury opposed the resolution. He regretted that this plan for the house of representatives was connected with the plan for the senate. He thought the people would reject the whole.

The resolution then passed.

The ninth resolution passed.

The tenth resolution being read,

Mr. FOX of Berkley moved to amend by striking out the word "other" in the last clause "every *other* year"; so as to give the small towns the right of sending a representative every year.

The amendment was negatived and the resolution passed.

The eleventh resolution being read,

Mr. PRESCOTT moved to amend by substituting the word "smallest" for "greatest"—his object was to make the year in which the valuation was settled, coincide with the year in which the smallest of the classed towns should be regularly represented, in order to give the advantage, if any, of extra representation to the largest of the classed towns.

Mr. LAWRENCE observed that the smallest of the classed towns, as the resolution stands, would have one more representative, in ten years, than the largest of the classed towns.

The question on the amendment was taken, and decided in favor of the amendment—92 to 66.

A new count was called for, on the ground that many members did not vote, and the amendment was negatived—117 to 155.

Mr. PRESCOTT moved to add to the resolution the following amendment, viz.:

"Provided, that if any two adjoining towns, each containing less than 1200 inhabitants, shall belong to the same class, and shall be desirous of belonging to different classes, and shall petition the Legislature to place them in different classes—it shall be their duty to do it accordingly—and such towns shall thereafter be entitled to elect a representative every other year, until one of them, by the number of its inhabitants, shall be entitled to elect a representative every year."

The amendment was adopted and the resolution passed.

The twelfth resolution was read and passed.

The thirteenth resolution, which requires that towns hereafter incorporated, shall contain 2400 inhabitants before they shall be entitled to send a representative, being read,



A member moved to substitute 1200. He said he could not perceive the reasonableness of giving all incorporated towns, containing a less number than 2400, the right of sending a representative, and denying it to towns of equal magnitude hereafter to be incorporated. There was no provision in the resolutions for new towns containing less than 2400 inhabitants, being either classed, or sending a representative by themselves.

Mr. MITCHELL of Bridgewater said he had prepared an amendment, which would more fully answer the purpose of the gentleman who last spoke. The amendment he would propose was, that new towns should be subjected to the same restrictions, and have the same privileges, as other towns of the same number of inhabitants.

The former amendment was accordingly withdrawn to give place to Mr. MITCHELL's.

Mr. MITCHELL said there were but thirty-five towns which had more than 2400 inhabitants. He was aware that it was an object to reduce the number of representatives, but he did not wish to deprive new towns of being represented at all. He had not been very friendly to the system of the select committee, but he wished to make it as perfect as possible, as he perceived that it was the intention of the House to adopt it. He presumed that if new towns should not have the privilege of sending a representative, the Legislature would not forget to tax them.

Mr. LINCOLN opposed the amendment. In this Commonwealth there was very little unincorporated territory; if Maine had continued united with Massachusetts, and this system had been adopted, there would have been some reason for a provision of this kind; but now it would only give a facility of dividing large towns. Under the system proposed, none would want to be divided, unless there should be enough in each division to entitle it to send a representative. He had witnessed so much mischief and injury to towns from being divided for political purposes, that he would not enable the Legislature to make a division with that view. If the town of Bridgewater wished to be divided for the more convenient management of their municipal concerns, there was no need of their having a right to send a representative. Mr. L. said he was not inconsistent with himself in making this remark; his object hitherto had been to prevent towns being deprived of their vested rights against their consent.

Mr. PRESCOTT spoke in opposition to the amendment. He supposed a town to have 3600 inhabitants. This number would be entitled to two representatives; but by dividing the town into three new ones, the same number of inhabitants would according to this amendment send three representatives.

Mr. MITCHELL replied.

Mr. VARNUM said he was aware that the town of Bridgewater had applied to the Legislature to be divided, and that the Legislature had declined granting their request. He hoped we had come to an

end of dividing large corporations. Bridgewater had been a large and respectable corporation for nearly two hundred years, and he hoped it would continue so for two hundred years more. He hoped the amendment would not prevail.

The amendment was negatived and the resolution passed.

The fourteenth resolution being read,

Mr. MARTIN said he should feel bound to oppose the resolution all in his power, and this being the last opportunity, he should state his objections. He proceeded to argue at some length against the resolution. He was opposed to the whole system, and he proposed to lay on the table to-morrow a proposition to take the old constitution with but one amendment. He moved to amend the resolution, so that the representatives shall be paid for their attendance by their respective towns.

Mr. FLINT spoke in favor of the resolution under consideration, and against the amendment. He said that the representatives came to do the business of the Commonwealth, and not of towns, and he did not consider it dishonorable or unjust to require the State to pay for their attendance.

Mr. MARTIN spoke again in favor of the amendment.

The motion was negatived, 33 to 274, and the resolution passed.

The fifteenth resolution was read.

Mr. PHELPS of Belchertown thought that a hundred was too high a number for the quorum of the house, and he moved to amend by striking out one hundred and inserting sixty.

Mr. VARNUM thought one hundred was too low a number, and the quorum ought to be equal to half the persons elected.

The amendment was negatived and the resolution passed.

The sixteenth and seventeenth resolutions were read and passed.

Mr. PRESCOTT, chairman of the committee to whom the subject was referred in the first reading, reported the following resolve, as taken into a new draft:

*Resolved*, That it is proper and expedient further to alter and amend the constitution, so as to provide, that when any two towns, each of which shall contain less than 1200 inhabitants, or any town, or town and district, now united for the purpose of choosing a representative, and another town, each of which towns separately, or united towns, or towns and districts, shall contain less than 1200 inhabitants, shall prefer being united for the purpose of electing a representative together every year, to choosing one every other year separately, and shall apply to the Legislature to unite them for that purpose, the Legislature shall unite them accordingly; and the meetings for the election of their representative shall be holden in such town, and at such time, and the choice they shall make shall be certified by the selectmen of one or both of said towns, in such manner as the Legislature shall direct;—and such towns shall continue so united until the inhabitants of one of them shall have increased to such a number as shall entitle it separately to send a representative; or until one of said towns, by a vote of a major part of the legal voters therein, shall apply to the Legislature to separate them; whereupon it shall be their duty to separate them accordingly; and to class them in the same manner they were classed before they were so united.

Read a second time, as reported, and passed.

The resolution for limiting the number of representatives after the year 1830, being read,

Mr. **PRESCOTT** moved to amend by striking out the proviso, and inserting the following :

And if any town which now contains 1200 inhabitants, shall, at the time of taking the census aforesaid, or in any tenth year afterwards, be found not to contain the number of inhabitants which, according to the provision aforesaid, shall then be requisite to entitle it to send a representative every year, such town shall be classed by the Legislature, and shall thereafter be entitled to send a representative every other year, until it shall have attained a competent number to entitle it to send a representative every year—and no town, or town and district, which, according to the census which is now taking, shall be entitled to send a representative every other year, shall ever be deprived of that privilege.

Mr. **PARKER** of Southborough was opposed to the amendment. It would have an unfavorable bearing on the small towns, and would do away the principle already allowed. It would deprive them of the prospect of ever attaining the right to a permanent representative.

Mr. **STONE** of Stow and Boxborough said that no provision was made for the towns now united.

Mr. **ABBOT** hoped the amendment would not pass. It would disturb the arrangement after 1830, and put it in the power of the Legislature to make the increasing number larger or smaller for party purposes. He thought it better to leave the system as it was reported. If the house should become too large in future, the provision for amendment would furnish the means for rectifying it.

Mr. **LINCOLN** said that the one hundred and forty-eight towns not entitled to a representative, unless they increased faster than the State at large, would never have a right to a representative.

Mr. **APTHORP** was in favor of the amendment, because there was no other way of limiting the number of the house.

Mr. **STORY** considered it as a proper and necessary part of the system. He hoped the amendment would prevail, because without it the house might go on to increase until it became as large as it is now, and a town of 1200 inhabitants, not increasing, might have a greater privilege than a town now smaller, which should increase to a greater number.

The amendment was agreed to—174 to 109—and the resolution passed.

Mr. **SIBLEY** moved that when the House adjourned it should adjourn to this afternoon at half past 3 o'clock. Negatived.

On motion of Mr. **PRESCOTT** the Convention proceeded to the first reading of the resolutions of the select committee relating to the council.

The first resolution was read, the amendment made in committee of the whole was agreed to, and it passed to a second reading.

The second resolution, which fixes the number of counsellors at seven, and the quorum at four, was read.

Mr. **MORTON** offered a resolution as a substitute for the second and third of the select committee, proposing that one counsellor should be chosen by the inhabitants of each senatorial district, and the persons so chosen should form the council ; vacancies in any

district, if any, to be filled by the Legislature, from the two persons having the greatest number of votes in the district.

The motion was decided not to be in order, it being a proposition to make a substantial amendment in the constitution, which had not been discussed in committee of the whole.

Mr. MORTON then moved that the Convention now go into committee of the whole, on the resolution. *Negatived.*

The second resolution then passed to a second reading.

The third resolution which provides that the counsellors shall be chosen by the two houses of the Legislature, in convention, was read.

Mr. MORTON moved to amend it by substituting in substance, a resolution offered by him in committee of the whole, proposing that there shall be annually chosen in each district one person to be returned as counsellor, and that from the persons so returned seven shall be chosen by joint ballot, to constitute the council.

Mr. MORTON stated briefly his reasons in favor of the amendment. It had been his object to make it conform to the true spirit of the constitution, from which he considered the proposition of the select committee a direct departure.

The amendment was *negatived.*

On motion of Mr. DANA the blank was filled with the first Wednesday in January.

Mr. QUINCY said, that the phrase, "from among the people at large," had received a construction which he thought was incorrect. To restore what he considered the true construction he moved to amend the resolution by adding the words, "excluding members of the house of representatives."

Mr. BOND opposed the amendment. He said it had sometimes been found difficult to find persons in each district suitably qualified who would accept the office; and the persons best qualified might be members of the house of representatives.

Mr. QUINCY replied to the objection, and the amendment was agreed to—160 to 31.

On motion of Mr. SIBLEY, the resolution was further amended by inserting before "representatives" the words, "senators and."

Mr. BLAKE hoped he should not have the appearance of too great pertinacity in favor of a principle which he had supported, if he renewed the proposition which he had made in committee of the whole to retain the mode of election now provided by the constitution. He therefore moved that the resolution should be so amended as to provide that no further alteration should be made in this part of the constitution.

Mr. AUSTIN moved that the question on the amendment should be taken by yeas and nays. *Negatived*—28 to 241.

The amendment was *negatived* without a division.

Mr. PICKMAN moved to amend the resolution by inserting,

The counsellors shall have the same qualifications in point of property and residence in the Commonwealth as are required by this constitution for senators, and the

senate and house of representatives may fill any vacancy that may exist in the council by reason of death, resignation or otherwise, in the manner aforesaid.

The amendment was agreed to.

The resolution then passed to a second reading.

The fourth resolution was amended on motion of Mr. TAFT of Uxbridge, by substituting "senatorial district" for "county," and passed to a second reading.

The fifth resolution was read, the blank filled with the first Wednesday in January, and passed to a second reading.

To-morrow at 10 o'clock was assigned for the second reading of the several resolutions.

Leave of absence was granted to MESSRS. OAKHAM of Pembroke, GROSVENOR of Paxton, DICKENSON of Belchertown, GILBERT of North Brookfield, and COBB of Brewster.

The House adjourned.

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FRIDAY, JANUARY 5.

The House met at half past 9 o'clock, and attended prayers offered by the Rev. Mr. Jenks. After which the journal of yesterday was read.

Leave of absence was granted to MESSRS. DIMMICK of Falmouth, HOWARD of Bridgewater, HARWOOD of Enfield, FISHER of Lancaster, and PARKER of New Bedford.

On motion of Mr. DRAPER, chairman of the committee on accounts, it was ordered that each member of the Convention be furnished with a copy of the journal of its proceedings, now publishing in a volume, providing the same may be had for a reasonable compensation.

Mr. HINCKLEY of Northampton, chairman of a select committee to whom a resolution on the subject of filing informations was committed at the first reading, reported the same with amendments, and to-morrow was assigned for its second reading.

On motion of Mr. LYMAN of Northampton, the resolution offered by him respecting counsellors was referred to the committee of the whole to whom was referred the resolution of the select committee on the subject of Harvard College.

On motion of Mr. LEACH of Easton, the resolution offered by him yesterday respecting banks, was referred to the same committee of the whole.

Mr. HINCKLEY, chairman of the select committee to whom the subject was referred, reported a resolution for regulating the proceedings in prosecutions for libels. Referred to the same committee of the whole.

Mr. FISHER of Westborough offered a resolution respecting the salaries of the governor, and justices of the supreme judicial court. Referred to the same committee of the whole.

A member offered a resolution proposing to abolish the office of

lieutenant governor, and moved that it be referred to the same committee of the whole. **Negatived.**

On motion of Mr. **WEBSTER** the House went into committee of the whole on the resolution relating to Harvard College, and the other resolutions referred to the same committee, Mr. **PICKMAN** of Salem in the chair.

The committee proceeded to the consideration of the resolution offered by Mr. **LYMAN**, for providing that no counsellor shall be appointed to any other office during the time for which he shall have been elected a counsellor.

Mr. **LYMAN** said he borrowed the provision from the constitution of Maine. The design was to prevent the governor being surrounded by men desirous of office. He would have the counsellors above the desire of other offices.

Mr. **TURNER** of Scituate suggested that the office of justice of the peace should be excepted.

Mr. **DANA** of Groton objected to the resolution, as its tendency would be to prevent suitable persons from accepting the office of counsellor.

Mr. **STARKWEATHER** and Mr. **BOND** spoke in favor of the resolution.

Mr. **WEBSTER** said he thought a little reflection would convince gentlemen of the inexpediency of this provision. Something like it was to be found in the constitution of the United States, which prohibited members of Congress being appointed to any civil office under the authority of the United States, created while they were in Congress; but this prohibition never came to anything. A law would be passed on the third of March, and the appointment be made on the fourth. Counsellors would decline in order to be capable of holding a more desirable office. If the governor had not sufficient character to prevent him from being unduly influenced, we ought not to prevent him in this way; and we could not do it if we would. We should diminish the respectability of the council, if going into the council was going into Coventry. No evil had resulted from the want of such a provision in the constitution.

Mr. **QUINCY** said office seekers were a slippery race: They only slip off one skin and go into another. A provision of this kind would not be secure against evasions. He hoped the resolution would not be adopted.

The question was taken on the resolution and decided in the negative.

The committee next took up the resolution respecting libels, providing that in prosecutions for libels against public men, the truth may be given in evidence, and that the jury may determine both the law and the fact.

Mr. **HINCKLEY** remarked that the select committee had taken time and duly considered the subject of the resolution. Some of that committee thought the law was well established in conformity with this resolution, and some thought it would be well to have an ex-

press clause in the constitution. This resolution did not go so far as the proposition of the gentleman from Boston which was referred to the committee.

Mr. BLAKE hoped the resolution would prevail. He had thought the constitution defective in this particular. The constitution adopted the common law as it had been used and practised in this Commonwealth, leaving it uncertain what part of that law had been used and practised here. In a case twenty years ago, it was contended that the odious common law doctrine, respecting libels, had not been adopted in this Commonwealth, but the court were of a different opinion. Great pains had been taken to render the law clear respecting offences, but with respect to seditious libels there had always been doubts and a difference of opinion. As the common law stands the court has unlimited power in relation to the punishment of offenders. At the common law the practice had been carried to a monstrous extent; so that the truth of the charge was held to be rather an aggravation of the offence. The present resolution proposed a useful alteration.

Mr. PARKER said it had been decided that the constitution already contained the provision, and more broadly than in the amendment proposed, that the truth might be given in evidence in prosecutions for libels against public officers. And as to the other part of the resolution, the law now was that the jury were judges of the law and the fact under the direction of the court. He considered the proposed alteration to be unnecessary.

Mr. SALTONSTALL said the amendment had been urged on the ground that the common law was adopted by the constitution. The article only provides that the laws usually practised on in the courts of law, shall remain in force until altered or repealed by the Legislature. If any modification of the law is necessary it is entirely in the power of the Legislature. But it is not necessary. The law now stands precisely on the footing on which the mover of the resolution would wish to place it.

Mr. MORTON, as one of the select committee, assented to the report, not from any apprehension of the law as it now is, but of the common law of England formerly—that only the fact of publication need be proved, and the court was to determine what was libel. But in this country the common law is adopted only as far as it is applicable to our institutions. He stated the law as it had been laid down in our courts. He was willing the resolution should be either adopted or rejected.

Mr. DUTTON hoped the resolution would not be adopted. It went only to establish what was now the law of the land. In the case of the *Commonwealth vs. Clap*, the whole law was laid down, and in broader terms than in this resolution. That the jury have the right of deciding on the law as well as the fact, is a part of the common law of the country—and it is laid down in broader and more favorable terms than in the resolution. Besides, the Legislature have full power to act in the case if it were necessary.

Mr. AUSTIN of Charlestown hoped the resolution would pass. If it was now the law of the land, he asked if it was twenty years ago, and if it might not be different twenty years hence. It was said the Legislature had power to alter the common law. But they have not done it. If in forty years they have not exercised the power, it is time we should do it for them.

Mr. BLAKE said it had been stated that the whole subject was well settled by law. He wished to know if it was by the constitution. What was law to-day might not be law to-morrow. The books were full of cases in which the decisions of judges were overruled by succeeding judges, and the law of libel was more likely to be changed than any other. It was contended that it should be left to the Legislature—we might as well leave the liberty of the press to the Legislature. The constitution established the freedom of the press, and the law of libel was intimately connected with it. It was a very difficult subject to say what was libel, and what was not, and it was as much the duty of the Convention to make the law of libel permanent as the liberty of the press. He referred to a case in 1798, when it was decided by the supreme court of that day that the truth could not be given in evidence, but the court allowed it as an indulgence which the law did not require.

Mr. JACKSON of Boston agreed that the resolution was unnecessary because the law already contained all that was required. The principle had been settled in this State several years ago, and had been uniformly acted upon. But he objected to the resolution, because it restrained the law and made it more narrow. The principle of the law is, that one may always publish the truth from right motives and for justifiable ends. This he conceived to be the common law of England, if rightly understood, but having been corrupted, the act of parliament of the last reign was passed to bring back the law to what it was formerly. When the people are called on to elect public officers it is right that they should be informed of the characters of the candidates, and it is the right of any person to instruct the public mind in relation to them. On this principle, all candidates are considered as putting their characters before the public, and any one has a perfect right to say anything that has any relation to their qualifications for the office that is true. This right depends on the motive and the end in view. But this resolution does not go far enough. It extends only to public men. Suppose an apothecary in vending medicines sells those which are poisons, no one can doubt that it is my duty to inform. What is the ground on which I am excused? It is that I do it from a right motive, and for a justifiable end. But the resolution does not go to this case. If it is a part of the constitution, it ought to go to every case to which the reason of it extends.

This resolution is loose in another view. It would seem to give the right to publish everything of a public officer that is true, though it be done from a corrupt and malicious motive. If a man publishes a slanderous private anecdote of an individual, which has



nothing to do with his qualifications for office, and if the jury believe that it is done for a malicious motive, and that he took advantage of the occasion of his being a candidate for office, to give vent to a private pique, they ought to convict him, and it should be no answer that what is asserted is true. The resolution therefore does not go far enough in one particular, and goes too far in another. Besides, the present law is on a proper footing, and if the decision should be overruled, it is in the power of the Legislature, by statute, to regulate it at pleasure.

The resolution was negatived.

The resolution offered by Mr. FISHER, providing that the General Court should have power to lessen as well as enlarge the salaries of the governor and justices of the supreme judicial court, when they shall judge proper and expedient, was agreed to, without debate.

The resolution providing that no bank should hereafter be incorporated, nor the charter of any existing bank renewed, unless the stockholders shall be liable in their private capacity, was read.

Mr. THORNDIKE opposed the resolution. It did not determine who were intended, the original stockholders or the stockholders at the time of any defalcation.

Mr. STORY opposed it. If adopted, no bank would ever be established unless by a few rich individuals, who had perfect confidence in each other, and it would be in few hands. It would besides put it in the power of speculators to establish banks and make a profit from the stock, and to shift all the burden upon the poorer and least protected class of people, to widows, minors and orphans, who have no share in the direction and no means of judging of the hazards they run. If the original stockholders are to be liable, the man who sells out will be liable to the amount of his whole estate for the acts of his successors. He may die, leaving an independent fortune to his family, and in one year after his death it may be all taken from them for a defalcation in a concern in which he had for years had no interest. It would besides produce no remedy for the evils under which we labor. Bills from other states, entitled to vastly less confidence than our own, would supply the place of those which this measure would force out of existence.

Mr. STURGIS, Mr. QUINCY, Mr. WELLES, Mr. BOND and Mr. SHAW spoke against the resolution, and Mr. HOYT said a few words in favor of it.

The resolution was negatived—126 to 173.

The resolution reported yesterday, for confirming the charter of Harvard College, with a modification, was then taken up.

Mr. VARNUM called for the reading of the law of 1814. The law was read, and also an attested copy of the acts of the corporation and of the board of overseers, dated January 3, 1821, signifying their assent to the proposed alteration of the charter.

Mr. VARNUM said the law of 1814 had never been agreed to at a meeting properly notified.

Mr. WEBSTER said he should prefer not to take up much time now, but wished to give the resolution the necessary passage through the committee, and to take it up to-morrow for more full consideration when the report would have been in the possession of members.

Mr. RICHARDSON said that he was happy to hear yesterday the report on the liberal principles which were now acknowledged in theory. When the subject was first introduced, the gentlemen who defended the College, took the ground that the charter could not be altered. He was happy to learn that this ground was now abandoned, and to find that it was agreed that it might be altered so as to admit to the corporation ministers of other denominations. As far as the resolution proposed to admit the right of the corporation to elect persons of other denominations, he was in favor of it. But he could not admit that it was proper to confirm the board of overseers as it is now constituted. That board was constituted contrary to the express provisions of the constitution, which established the Congregational ministers of the neighboring towns as part of the board of overseers. These are excluded by the act of 1814 which is now to be confirmed. Nothing was gained to other denominations by this exclusion. The board of overseers had never made such a mistake as to admit among the fifteen clergymen a minister of any other denomination. It was the intention of the constitution that the General Court should always keep the College under its control. The Legislature had no power to transfer the vested rights of the Congregational clergy. The act of 1814 will keep the control in the hands of Congregationalists. The Congregationalists in the State government, voting with the thirty permanent overseers, will keep the government of the College out of the power of the State. All the permanent clerical overseers must be Congregationalists; no others are thought worthy, although those who are usually elected much less resemble, in their sentiments, the teaching elders, than do those of some other denominations. This board, so constituted, is to continue forever, without any favor to persons who have not a liberality like their own. If the resolution had only proposed to strike out of the constitution the word "Congregational," he should have been in favor of it; but as it also proposes to confirm the board of overseers as now constituted, he should vote against it, that we may retain the constitution as it now stands.

Mr. WEBSTER said it would be affectation in him to express surprise at the opposition of the gentleman from Hingham, although the resolution was in conformity to his own proposition. If the gentleman had read the constitution, he would have perceived that the Legislature had the power, with the consent of the corporation and board of overseers, to make an alteration in the board of overseers, according to the act of 1810, which was reëstablished by the act of 1814. The select committee agreed that the present constitution of the government of the College was safe and efficient, and that the State government had as much control over the College as

was necessary or proper. As far as his knowledge extended, no literary institution had ever flourished by being under the immediate control and management of the civil government. If there was a settled, well regulated College government, they would feel a deeper and more immediate interest in the prosperity of the College, and would manage its concerns with more efficiency and advantage to the community. He was astonished to hear the gentleman from Hingham express apprehensions from the enormous power of this corporation. If he did not misunderstand him, that gentleman said we should have a powerful institution built up by the State and independent of the State.

Mr. RICHARDSON disavowed having expressed such a sentiment.

Mr. WEBSTER said he did not mean to-day, but when the subject was before under discussion, and he presumed the gentleman had the written speech in his pocket, in which he might find the remark, if he would take the trouble to turn to it. He recollected that the gentleman then moved to strike out the word "Congregational" from the constitution, to prevent clergymen of that denomination from having exclusive privileges. This is granted to him; and now he says we are taking away the rights of Congregational clergymen. All that that can be done is to open the door to persons of all denominations; the gentleman is not warranted in saying that none but Congregationalists will ever be admitted. In answer to the gentleman from Dracut, Mr. W. said the board of overseers might be wanting in rules to regulate their proceedings; he would only remark that the meeting held by them, for the purpose of assenting to the law of 1814, was warned in the manner which has been practised for a long time.

Mr. STORRY said he had listened with an anxious desire to know the difficulties relating to the constitution of the College, and the remedies which might be applied to them. When the report of the select committee was read, and a remedy provided for all the difficulties which had been pointed out, he hoped the resolution would have passed without opposition. It appeared that the College had suffered much in the public opinion, from a misrepresentation of the amount of its funds, and the manner in which they had been appropriated. These misapprehensions were now dispelled. What have been the practical difficulties heretofore? that the government and privileges of the institution were not open equally to persons of all denominations. It was not pretended that the College was not established by Congregationalists; and Congregationalists had done no more than is usual with other sects, when they found an institution of this kind. Would any gentleman say that Andover College ought to be subjected to Christians of another sect? It was said that Harvard College was the child of the State and under its patronage. He was glad of it, and he was sorry that its funds had been aided so little by the State, much less than he had supposed, compared with the munificent donations of private individuals. In regard to the charter, had any man doubted that the constitution of

1780 was right? And had not the alterations made since by the Legislature, in the government of the College, been in conformity to the constitution? He might have it his duty, hereafter, to keep his mind open to every suggestion which can be made against the validity of such acts of the Legislature, but with his present information on the subject, he thought that the law, made with the consent of the University, establishing the board of overseers as it is now constituted, was as immovable as the constitution itself. The gentleman from Hingham says that forty-six members of the board of overseers, composed of the governor, lieutenant governor, &c., may be overruled hereafter by the thirty permanent members. It was equally true that fifty can overrule one hundred and fifty. The gentleman too assumes, what is not to be presumed, that the fifteen clergymen and fifteen laymen appointed overseers, will be corrupt men. The notion that confidence cannot be placed in such men is subversive of all boards. If any wrong is done by them, the people can choose, the next year, a new board in part, which will have power to correct the errors or misdoings of the former board. A great part of the members from the State government live at a distance from the College. It is a great object to have a permanent body to overlook the proceedings of the corporation, and a power is now given to the State to interfere when any wrong is required to be corrected. Abuses would take place if there were not a permanent body to oversee, and there might be danger from this permanent body if it could not be controlled by the government. Gentlemen living at a distance cannot conveniently attend the meetings of the overseers, but a new rule can be made, requiring notice to be given so many days before the time for meeting. Not a doubt had been breathed that any wrong had been done by the corporation or overseers, and if any doubt had hitherto existed, the present report showed that it was without just cause.

MR. QUINCY, in reply to the gentleman from Hingham, said he was astonished at the course the debate had taken. He before understood that that gentleman moved to strike out "Congregational;" he now understood that he was the advocate of Congregationalists. He now objects that the law takes away from the Congregational ministers of the six neighboring towns their vested rights.

MR. RICHARDSON explained. He said his ground was, that if "Congregational" should be struck out and the present board of overseers should not be perpetuated, his object would be effected. If the board should be perpetuated it would not.

MR. QUINCY said that he understood the gentleman according to his explanation—as also his other objection that the fifteen laymen and fifteen clergymen placed the board of overseers out of the control of the Legislature—which was just saying that *thirty* was a majority of *seventy-seven*. The whole shows that the gentleman has not analyzed political with the same attention he is accustomed to pay to theological subjects. His objection, as now urged, was to the right of divesting the Congregational ministers of the six neigh-

boring towns;—whereas his former objection was to that right being confined to *Congregational* ministers. As to restoring the right to the six towns, as such, and striking out “*Congregational*,” it was obviously impracticable. The effect would be that all denominations of every description would be introduced. This would bring, at the present moment, forty-four clergymen into the board, instead of fifteen as at present constituted. The only mode by which that liberal principle of introducing gradually other denominations into the board, would be effected, was that existing in the present constitution of the College, by election. If the right was confined to the six towns, and all denominations admitted, it would make a board in which the clerical part would outweigh all the other. In reply to the objection of the gentleman from Dracut, (Mr. VARNUM) Mr. Q. read an extract from the Appendix to the College charter, passed in 1656—which provides that the board of visitors might be formed without summoning those members whose habitations were at a distance, which had been construed to extend to the members residing in the six neighboring towns.

Mr. DEARBORN of the select committee on the subject, said he was in hopes that after the report which had been presented, we should have heard no more noise about Cambridge College. The government of the College acted towards the committee in the most liberal manner. They were disposed to keep nothing back. They wanted the committee to investigate more than the late period of the session would admit of. The clause containing the word “*Congregational*,” being the only one to which an objection had been made, he hoped the resolution would have removed all difficulty. He asked, how could it be said that the people had not the power over the body of overseers, when they elect every year a majority of them? What were the facts detailed in the report? That the College had unexhausted funds, the gift of the State to the amount of £400 per annum, from different bridges over Charles river, and \$7000 in wild lands, while the unexhausted donations of individuals were \$201,000. One would think that these donations should entitle the donors to a little voice in the management of the concerns of the College, and that the civil government should not have the whole direction. He thought it was proper that the government should have some surveillance, and the present constitution of the College gave them sufficient. No evil was experienced, and the state of the College reflected great honor on the government of it and on the Commonwealth. He was in favor of the rights of the people as well as other gentlemen; but he could not sit quiet and have gentlemen ask one day for one thing, and say they should be satisfied with it, and then when it is granted to them, increase in their demands.

Mr. TILLINGHAST, of the select committee, rose to express distinctly that he was satisfied perfectly with Cambridge College. They showed a liberality far beyond his expectation or wish; they were profuse in communicating information. It was as well man-

aged as it could be with the funds it possessed. As to the particular denomination of the College, he had nothing to do with it. He was entirely satisfied with their liberality, and he hoped the resolution would pass without a word in opposition to it.

Mr. BALDWIN of Boston said he was not only satisfied with the luminous report, but should wish to give both his voice and his vote in favor of the resolution. It seemed to him that the law of 1814 was the ground on which the institution stood. The only objection to the charter was the restriction respecting the clergy. He had objected to that, but not on his own account, for he never expected a seat at the board of overseers. That restriction being taken off, he was entirely satisfied. He had known that young men of his denomination had received as much courtesy at the College as those of the Congregational denomination. If the College got into the hands of persons of different sentiments from those of the original founders, that was none of his business.

Mr. BOYLSTON of Princeton said the gentleman from Roxbury (Mr. DEARBORN) had nearly anticipated all he had to say. He begged gentlemen to consider that about two thirds of the personal property of the College was given by private individuals; of which he had himself contributed a small part. He hoped that some respect, some consideration would be given to the donors in relation to the management of the institution. He expressed his satisfaction with the resolution.

Mr. AUSTIN of Charlestown hoped the vote would be unanimous on this resolution. He said that Harvard was from the town he represented—that the government originally gave £400, and the College had grown up under the patronage of the Legislature. The alteration proposed was one in which he cordially agreed. The objection which had been made respecting the constitution of the board of overseers, had been answered by the gentleman from Salem. It was necessary to have overseers in the neighborhood. The overseers had no pay—the office was rather a hardship, although it was an honor, and there ought to be no jealousy respecting the board. There had gone forth jealousies, but they were unfounded. The College was the ornament of the land. If we did not encourage it, we were injuring our own interest. We should attract young men from other parts of the country instead of compelling them to go somewhere abroad for an education. A suspicion had gone abroad that the College had enormous funds. There was no foundation for it. He was informed that some of the scholars were obliged to live out of the Colleges for the want of funds to erect buildings to accommodate them. While gentlemen were paying liberally for the support of a particular doctrine, he hoped some crumbs might fall a little to the westward. He had formerly entertained prejudices against the College, but they had been long since dissipated.

Mr. DANA said that the resolution went to declare that the rights and privileges of the College should be confirmed with an addition. He was ready to consent to it. He believed that if a new govern-

ment were to be formed independent of existing rights and privileges, a better could not be devised. As to the corporation, the committee had disclosed one of the most extraordinary and honorable facts in the history of this institution. It had existed from 1636 to the present time, and not a single delinquency had occurred of one of its officers. The organization of this branch of the government he was unwilling to change in the smallest degree. They might have their prejudices, for they were but men. But the affairs of the institution must be managed by human agents, and nothing could be devised better. As to the board of overseers was there a sufficient popular influence? Of the seventy-six members, forty-six were annually chosen by the people or by the Legislature. They must have a sufficient control and oversight of the concerns of the institution. Nothing could be done secretly, and nothing wrong could be done which they could not overrule. The seeds of republicanism had been sown so long, and the crop was so great, that contrary principles could not exist. No institution could exist without the support of the public sentiment. How long could the College exist without the assistance of the Legislature? The grant of \$100,000 would expire in four years, and the College would be obliged to come back to the Legislature for further grants, which could annex such conditions to their grants as they should see fit. He wished to dispel all prejudices, and to induce the whole public to love this institution, for of all institutions it was the one which we ought to cultivate the most.

Mr. HUBBARD was satisfied with the first report. He saw no necessity of making any alteration. The constitution gives to the Legislature the power of appointing the board of overseers. This power has existed with the government ever since the existence of the College, and they have exercised the power. It is a public institution, and the public ought to reserve the power of visitation, or the power of appointing the board of overseers. They retained that power to the year 1810. The board of overseers until that time consisted of men all appointed for public purposes, including the Congregational ministers of the six neighboring towns, constituting a body of men of education, and acquainted with the interests of literature. The Legislature had no control over the rights and privileges vested by the charter in the corporation, but had the right of visitation. He contended that there was no necessity for a constitutional provision, relating to Congregational clergymen. There was no right secured to them which was not equally secured to the ministers of the six towns. He referred to the article of the constitution to show that they both stand on the same constitutional right. If the Legislature can take away the right of the ministers of the six towns, they can also take away the exclusive rights of the Congregational order. Until the year 1810, it was always in the power of the Legislature to change the board of overseers without their consent. There never was an act until that time when the consent of the overseers was required. The inference to be drawn hereafter is,

that no alteration shall be made without the consent of the corporation and overseers. By this report it is said they consent. He was not disposed to adopt this resolution. The board of overseers ought to be under the control of the Legislature. It was a public institution supported by the public with the aid of private donations. Although the corporation and board of overseers consist of men, who are wise and virtuous, he would not take away from future legislatures the power to interfere. The report the other day was supported by the friends of the College, on the principle that its chartered rights are protected already. If so, they require no constitutional confirmation, and he hoped that no alteration would be made.

Mr. WEBSTER doubted whether the member last speaking (Mr. HUBBARD) would, on further consideration, incline to be bound by the opinion which he had now expressed, as to the legal rights, arising under the several laws and charters. He supposes that the Legislature has full power to alter and modify the board of overseers, at pleasure, without its assent, or that of the president and fellows. But on this point, there was known to have been great diversity of opinion. Legal characters of the first distinction had heretofore been consulted, and had come to a different result, from that of the honorable member. If the board of overseers were *visitors*, in the common legal acceptation of that term, there would be great difficulty, he thought, in maintaining this right of the Legislature to interfere at pleasure. The general principle certainly was, that when either the government or an individual founded a College, or other charity, and vested, in certain individuals, or in a corporation, the property and government of the charity, the power of the founder had ceased, and was at an end; except so far as it might have been specially reserved. The power of visitation springs from the property; like property it is transferable by the grant of the founder, nor can it, in general, be revoked, any more than the grant of the property may be revoked. Therefore, if, in the institution of the College, the government had vested the power of *visitation*, strictly speaking, in the overseers, it certainly was very questionable whether it could properly revoke it, without their assent; and as the overseers are persons who take that trust by official succession, it might not be easy to see how they could give an assent which should bind their successors. He, (Mr. W.) was rather inclined to think that the overseers were not *visitors*, as the common law understands that term. Originally, they appear to have been mere public agents to superintend the public donation; and when, afterwards, the charter was granted, and the president and fellows incorporated, and vested with powers of government, it was nevertheless provided, that all their acts should be subject to the approbation or disapprobation of the board of overseers. This was not analogous to the case of usual visitatorial powers. It was important to observe, that here being a charter, by which not the scholars, or those who were to receive the benefit of the funds were incorporated, but certain trustees, who were to hold the funds, for the use and benefit of the



scholars, no power of visitation in this case results to the founder, by the operation of law. He has parted with all, as well the government as the property, except so far as he has expressly reserved it. In general, too, visitors inspect and regulate the actions of those who partake of the bounty, and not of the trustees. Indeed there are no visitors, where there are trustees, unless expressly provided for in the charter or statutes. The power of visitors, even where they exist by the charter, is not usually concurrent with that of the trustees or fellows. They maintain a general inspection; in some cases make periodical visitation, hear complaints of grievances, and redress them, and entertain appeals, from the trustees or fellows, or those who possess the immediate government of the society. But in this case the overseers possess a power of approving or disapproving every act of the fellows, by the original charter. This not being a regular visitatorial power, it might seem to follow, either that the overseers were an integral part of the corporation itself; or else, a board of public agents, to whose control, in all cases, the fellows by their charter were expressly made liable. In the first case, it would be exceedingly doubtful whether the Legislature could change the board without its own consent; and doubtful, too, how that consent could be given; and, in the other case, it had been argued with great plausibility, to say no more of it, that as the president and fellows received their charter on condition of being subject to a board of overseers, constituted in a particular manner; one of themselves always to be a member of it, *their* consent should be obtained, before an alteration could properly be made, either in the numbers or constitution of that board. He, (Mr. W.) intended to express no opinion on these questions, although he had studied them with some diligence. There was, no doubt, room for difference of sentiments. The original laws and charters were very short and imperfect; and much was left to construction. The committee thought the course of wisdom was to examine the actual government of the College as it existed at the present moment, under the various provisions of the charters and laws, and finding that government to be a fit and proper one, to establish and confirm it. He sincerely hoped the Convention would concur in this sentiment. Nothing could be more injurious to the College, or indeed to the public, than that such an institution should rest on a litigious or doubtful foundation. The College, in both boards, had assented to the alteration now recommended. No other or further change seemed to be desired by anybody, and universal satisfaction might be well anticipated, he trusted, from the adoption of the resolution.

Mr. QUINCY said a few words in favor of the resolution.

Mr. RICHARDSON called for a division of the resolution for the purpose of taking the question on the first part of it.

The CHAIRMAN declared it to be incapable of a division.

Mr. HUBBARD said that formerly an act of the Legislature had passed by which the board of overseers was enlarged so as to take in the ministers of Salem, Danvers, and other towns.

The question was taken on agreeing to the resolution and decided in the affirmative—227 to 44.

The committee rose and reported their disagreement to the resolution for restricting the appointment to office of persons who were counsellors—for regulating the law of libel—and to restrict the power of granting bank charters—and their agreement to the resolutions relative to the salaries of certain officers and to the charter of Harvard College.

The Convention concurred with the committee in their disagreement to the three first resolutions, and on the question whether a time should be assigned for the first reading of the resolution relative to the salaries of the governor and judges,

Mr. STORY said that the necessary result of the adoption of the resolution would be a complete and entire prostration of the whole judiciary. Everything in the constitution, for securing the independence of the judiciary, was completely annihilated. Any Legislature without the power of removal may, by passing a law to reduce the salaries, remove the whole bench of judges. It applied to the present judges and was a violation of the contract of every judge now in office with the State; it was a violation of the constitution of the United States, by undertaking to violate one of the most solemn contracts ever entered into. There was also the greatest injustice in it; there was not a gentleman on the bench who had not made great sacrifices in leaving a lucrative profession to accept this office. It would be a complete violation of their contract with the State, and take away the compensation for the sacrifices they had made. What man hereafter of any eminence in his profession would accept an appointment to the office, if it depended on the breath of the Legislature to say whether the salary, whatever it might be, should be reduced to nothing.

Mr. WEBSTER interrupted. He believed the object of the mover had been misapprehended.

Mr. FISHER of Westborough said he had offered this resolution because the constitution gave the authority to increase the salaries of the officers named, and it had been doubted whether they had authority to diminish them. He thought the rule ought to operate both ways. His idea was that it should not operate on gentlemen that held an office; he thought it was always understood, that the Legislature should not have the power to reduce the salary while the person who held the office was in.

Mr. STORY said it was in the power of the Legislature to alter the salary in relation to the governor and all officers but those who hold under the tenure of good behavior, and the salary of judges may be reduced for a future officer. All that is fair and reasonable can be effected now. But the objection was, when a judge comes into office, on a salary of \$3000, it may the next year be reduced to \$100. He did not object merely that it applied to the present judges but to all future judges. It was enabling a popular man to

hold up his finger to the judge trying his cause, and say, your livelihood depends on your deciding this cause in my favor.

Mr. PRESCOTT again interrupted the speaker. The proposition was entirely misunderstood. It was intended by the mover to be prospective.

Mr. STORY said the proposition admitted of no misunderstanding. He could only take it as it was. If the gentleman wished to make an alteration that would apply to the case of an officer afterwards to be appointed, he could submit such a proposition.

Mr. FISHER said he would withdraw the resolution.

The PRESIDENT said it could not be withdrawn. After some further conversation the Convention refused to assign a time for a first reading of the resolution.

The resolution relating to the charter of Harvard College was read a first time and passed, and 10 o'clock to-morrow assigned for a second reading.

Mr. ALVORD of Greenfield moved to reconsider the vote on the second resolution relating to the senate in the second reading, for the purpose of proposing an amendment which he stated. After some debate the vote was reconsidered.

Mr. ALVORD moved to amend the resolution by adding, "and that the senators be so apportioned among the said district as that no district may elect more than six."

Mr. A. said that although there was this limitation in the present constitution, a true construction of the amendments now agreed to, would be to repeal that limitation. He concluded therefore that the limitation ought to be incorporated into the amendment, and for that purpose he had proposed this amendment.

Mr. PRESCOTT said, that to remove all doubt he wished the amendment might be adopted.

The amendment was agreed to, and the resolution, as amended, passed.

The first reading of the resolutions relating to the declaration of rights was assigned to half past 10 o'clock to-morrow.

Mr. STURGIS gave notice that he should to-morrow move to rescind that part of the rule which requires that two readings of any proposition to amend the constitution, be on different days.

The resolutions relative to the lieutenant governor and council were severally read and passed.

The resolution relating to the qualifications for voters was read a second time.

Mr. BOYLSTON opposed the resolution. He said it would materially affect the elections in some towns, particularly manufacturing towns.

Mr. LELAND moved to strike out the word "therein" and insert "within any town or district in the Commonwealth."

Mr. DANA said the resolution at present did not accord with the views of the committee who reported it. They did not mean to

make it necessary that the tax should be paid in the town where the vote was offered.

Mr. RANTOUL of Beverly opposed the amendment on account of the inconvenience it would occasion in practice. The selectmen would be obliged to decide on the qualifications of the voter and would have no means of judging.

Mr. VARNUM supported the amendment. It would be incumbent on the voter to produce the evidence of his right.

Mr. MARTIN was opposed to the amendment and resolution altogether.

The amendment was agreed to—13 to 90.

Mr. WEBSTER moved to amend by adding the words, "to the Commonwealth." Mr. W. was willing to agree to the principle on which this resolution had been supported, that every person who contributes to the support of government shall be entitled to vote—but the principle was departed from if they were not required to pay a tax to the Commonwealth.

Mr. SIBLEY of Sutton opposed the amendment. He hoped that we should not always have to pay a Commonwealth tax. In that case we should none of us be voters.

Mr. WEBSTER said that we always had been obliged to pay state taxes, and he presumed that until the millennium we always should. After a considerable debate, in which Messrs. DANA, TILLINGHAST, NICHOLS, WEBSTER, STARKWEATHER, VARNUM, BLAKE, THORNDIKE, LAWRENCE of Leominster, MARTIN, LINCOLN, APTHORP, SALTONSTALL, CHILDS and TURNER, took a part, Mr. WEBSTER modified his amendment so as to read, "state or county tax of this Commonwealth." The amendment was agreed to.

Mr. SALTONSTALL moved to amend by striking out "six" and inserting "twelve" months as the term of residence in any town as a qualification for a voter.

Mr. LINCOLN opposed the amendment.

Mr. LAWRENCE of Groton and Mr. MARTIN spoke in favor of it.

Mr. DANA said that the practical effect of the amendment would be to require in most cases a residence of eighteen months.

The amendment was agreed to—129 to 124.

Mr. LINCOLN gave notice that he should to-morrow move for a reconsideration of the last vote; and

At half-past 3 the House adjourned.

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SATURDAY, JANUARY 6.

The House met at half-past 9 o'clock, and the journal of yesterday was read.

The House proceeded to the further consideration of the resolution which was under discussion yesterday upon the second reading, relating to the qualifications of voters for civil officers.

Mr. LINCOLN of Worcester, in conformity to the notice he gave

yesterday, made a motion to reconsider the vote by which the amendment was adopted, proposed by the gentleman from Salem, requiring twelve instead of six months' residence in the town where the vote was to be given. Mr. L. observed that as the constitution now stands, no term of residence was required for voters for governor, &c., and one year's residence in the town, was required for voters for representatives. As both these classes of voters were embraced in the resolution there seemed to be a propriety in taking six months, as the mean between the qualifications of voters for governor, &c., and of voters for representatives, in regard to residence. The operation of the amendment which had been adopted, would be to require in many cases a residence of eighteen months, on account of the elections being held in November. This effect would bear upon a large and respectable class of farmers, who from the course of husbandry are in the habit of taking farms and changing their residence in the spring. It would be hard to deprive this class of men, for so long a time, of their right of voting, merely for going from one town into another; and he believed there was not a gentleman in the House who would not reject the proposition if it was brought home to himself; if it was proposed that he should lose his vote, or be compelled to move in November, the most inconvenient season in the year. If it was required only that a voter should reside twelve months in the Commonwealth, he should assent; but to provide that the residence for that term should be in the town where the election is to be held, was inexpedient and unjust.

Mr. LELAND of Roxbury said it was important in providing for qualifications of voters, to make the rule as simple as possible. Whether a voter had a residence or not would be a question of fact to be determined by the selectmen, and if six months' residence only was required, as the taxes were assessed in May, and the elections were to be held in November, the selectmen would only have to look at the books of the assessors for proof of the residence. It would be matter of record; but if the time was enlarged, the selectmen would have to resort to a different and less satisfactory kind of evidence. He hoped the motion to reconsider would prevail.

Mr. SALTONSTALL said his design was to prevent vagrants and strangers from voting, who had no knowledge or interest in our state concerns. He should however wish the vote to be reconsidered, in order that he might substitute an amendment, which he thought might accord with the views both of the gentleman from Worcester, and the gentleman from Roxbury. He should move to amend so as to require a residence of a year in the Commonwealth and six calendar months in the town or district where the election was held:

The vote was reconsidered and Mr. SALTONSTALL moved his new amendment.

Mr. VARNUM of Dracut hoped it would not prevail. He said that

men who come into the State to let themselves out to labor, usually came in April and were taxed in May for the whole year, and they ought to have a right to vote after six months' residence. The usual term of hiring, however, was for six months, so that nine tenths of such laborers would be gone out of the Commonwealth before the time of the elections.

Mr. APTHORP of Boston said he was in favor of the amendment adopted yesterday and had advocated it in the committee—but it had not been his good fortune to be in the majority in the committee. It should be recollected that this resolution abolishes the pecuniary qualification required in the constitution. There would be some difficulty in settling the fact of residence, and the longer the time required the better would probably be the character of the voter, and the better chance would the selectmen have of ascertaining his qualifications. He should vote against the amendment for the purpose of substituting nine months' residence.

Mr. SALTONSTALL said the gentleman from Dracut might not have experienced the evil which was often felt by the large towns, of hundreds of men coming in from New Hampshire in the spring and voting in our elections, just after they have voted in the elections in their own state. Requiring a year's residence in the Commonwealth was reasonable, in order that we may know them and that they may become domiciliated. No complaint had ever been made in requiring a year's residence to entitle a person to vote for representatives. Was there anything unreasonable in denying to these birds of passage all those rights and privileges belonging to a fixed residence? The gentleman from Dracut seemed to think that the right of voting was the only equivalent for paying a tax. Mr. S. said the provision in the amendment appeared to him one of the most reasonable and best that could be devised. The year's residence in the Commonwealth would give the voters an opportunity of becoming acquainted with the character of the candidates, and the six months' residence in the town would enable the assessors to become acquainted with the voters to assess their taxes.

Mr. MARTIN spoke against the amendment and the resolution. He preferred the old constitution.

Mr. HORT of Deerfield said he hoped if the resolution should pass, that twelve months' residence would be required, but he preferred the provision in the constitution. This resolution would deprive many persons of the privilege of voting, who were possessed of but little property, whom the assessors in their discretion usually omit to assess. In regard to persons under guardianship, he said there were some who pay taxes and who ought to have a right to vote; for instance, a man put under guardianship for intemperance, who becomes temperate, but yet requires a rod to be held over him to keep him from relapsing.

Mr. BLAKE was in favor of the resolution as reported by the committee and against the amendment. Transient persons would not

have the right of suffrage wherever they happened to be. It was requisite that they should be citizens.

Mr. B. was answered that by the constitution of the United States the citizens of one state have the rights of a citizen in any other.

Mr. B. proceeded. In looking over the constitutions of the other states, he found that in most of them, nothing but an inhabitancy was required. If a person resided here six months and paid a tax he ought to have a right to vote, as much as if he had had a year's residence. He should be unwilling to have Massachusetts on a less favorable footing than her sister states, in regard to this fundamental privilege of a freeman.

Mr. LINCOLN said in answer to the gentleman from Dracut, that since yesterday he had become satisfied that a person coming from another state into this Commonwealth, to let himself out to labor for six months, with an intention of returning when his term of service expires, had no interest in the government; that he was merely the creature of his employer. With respect to persons having a permanent residence in the Commonwealth, this resolution would permit a man going from a town in one extremity of the Commonwealth to a town in the other, to have the same right of voting in the latter, by residing there six months, that he would have had in the former, if he had not changed his residence. In answer to the gentleman from Boston, he observed that this amendment did not alter the principle in the resolution reported by the committee. The qualification of residence did not affect the pecuniary qualification. In answer to the gentleman from Deerfield, who preferred the constitution as it is, he said it was necessary to make some change in the qualification of voters to conform to the alteration adopted respecting the union of towns for the choice of representatives. He was in favor of this amendment, in whatever view he might regard the whole resolution.

The amendment was adopted—297 to 2.

The resolution then passed as amended.

The resolution respecting Harvard College was read a second time and passed without a division.

The House proceeded to the consideration of the resolutions of the select committee on the declaration of rights, as reported by a committee of the whole.

The first resolution was read as follows:

*Resolved*, That it is proper and expedient so far to alter and amend the constitution of this Commonwealth, in the declaration of rights, as to provide, that the word "citizen" or "person" be substituted for the word "subject" where it occurs in the said declaration in the sense of either of the first mentioned words respectively.

This resolution, which was disagreed to in committee of the whole, was refused a second reading.

The second resolution which was agreed to in committee of the whole, viz.:

*Resolved*, That it is proper and expedient further to amend and alter the constitution so as that part which invests the Legislature with power to enjoin on individuals an attendance on public worship, may be annulled, and rendered no longer obligatory,

was read and passed to a second reading.

The third resolution agreed to in committee of the whole was read as follows, viz. :

*Resolved*, That it is proper and expedient further to alter and amend the constitution so as to provide, that, as the happiness of a people and the good order and preservation of civil government, essentially depend upon piety, religion, and morality, and as these cannot be generally diffused through a community but by the institution of the public worship of God, and of public instruction in piety, religion and morality : Therefore, to promote their happiness, and to secure the good order and preservation of their government, the people of this Commonwealth have a right to invest their Legislature with power to authorize and require, and the Legislature shall from time to time authorize and require the several towns, parishes, precincts, and other bodies politic, and religious societies, incorporated and unincorporated, to make suitable provision at their own expense for the institution of the public worship of God, and for the support and maintenance of public Christian teachers of piety, religion, and morality, in all cases where such provision shall not be made voluntarily.

Provided, notwithstanding, that the several towns, parishes, precincts, and other bodies politic, and religious societies, incorporated and unincorporated, shall, at all times, have the exclusive right of electing their public teachers, and of contracting with them for their maintenance.

Mr. CHILDS of Pittsfield moved to amend by substituting for the third and fourth resolutions, the following, viz. :

As the happiness of a people and the good order and preservation of civil government, essentially depend upon piety, religion, and morality ; and as these cannot be generally diffused through a community, but by the public worship of God ; and as the public worship of God will be best promoted, by recognizing the inalienable right of every man to render that worship in the mode most consistent with the dictates of his own conscience : Therefore, no person shall by law be compelled to join or support, nor be classed with, or associated to, any congregation or religious society whatever ; but every person now belonging to any religious society, whether incorporated or unincorporated, shall be considered a member thereof until he shall have separated himself therefrom in the manner hereinafter provided. And each and every society or denomination of Christians in this State shall have and enjoy the same and equal power, rights, and privileges, and shall have power and authority to raise money for the support and maintenance of religious teachers of their respective denominations, and to build and repair houses of public worship, by a tax on the members of any such society only, to be laid by a major vote of the legal voters assembled at any society meeting, warned and held according to law.

Provided, nevertheless, that if any person shall choose to separate himself from the society or denomination to which he may belong, and shall leave a written notice thereof with the clerk of such society, he shall thereupon be no longer liable for any future expenses which may be incurred by said society.

And every denomination of Christians demeaning themselves peaceably and as good citizens of the Commonwealth, shall be equally under the protection of the law ; and no subordination of any one sect or denomination to another shall ever be established by law.

Mr. CHILDS said this resolution was in substance the same as the one he had before offered, which was discussed in committee of the whole. He did not wish to take up the time of the House ; he would only say that he remained of the same opinion. It was the object of the whole Convention to have public worship supported ; members differed only about the means of coming at it. This resolution was in his view better adapted for that purpose than the



provisions in the constitution. He moved that the question on the amendment be taken by yeas and nays. Agreed to—104 voting in favor.

Mr. TILLINGHAST of Wrentham spoke in favor of the amendment. There was a general tendency in the public mind to toleration. The country would never be happy, and enjoy pure and undefiled religion, until every rag of this thing called superstition, bigotry, and law religion, were stripped from off the civil arm. Religion would always be supported, if it was of sufficient consequence to be supported. Religion was essential to the support of civil government, but there was no necessity for its being connected with it.

Mr. ENOCH MUDGE of Lynn rose merely for the purpose of correcting an error in a statement made on a former day by the gentleman from Boston, (Mr. J. PHILLIPS) that the Congregationalists in this State, were to all other denominations in the proportion of 450 to 150. Mr. M. said there were of Congregationalists 373 societies, Baptists 153, Methodists 67, Friends 39, Episcopalians 22, Universalists 21, of other sects 23; making the Congregational societies to all other societies in the proportion of 373 to 325; and he believed it would be found that there was even less difference than this, if there were means for ascertaining the numbers accurately.

Mr. LINCOLN of Boston said the amendment of the gentleman from Pittsfield contained the substance of what he wanted, but it was not altogether agreeable in its details. It contained the general principle of exemption from compulsory taxation for the support of religion. In the New Testament, our Saviour says his kingdom is not of this world. We had no right to interfere in the kingdom of Christ. He firmly believed that if this provision in the constitution was expunged, we should have less corruption and litigation, and religion would be better supported. If he did not believe this, he should be the last to raise his voice in favor of it; but he sincerely believed the political salvation of the Commonwealth depended upon it. It was better that the government should be supported by religion than religion by the government. Our religion was a persuasive one; and it was better to leave it to the influence of persuasion. The report of the select committee was too indefinite. It gave the Legislature unlimited power to say in what manner *suitable* provision should be made. He would not show distrust in the Legislature; but it was proper that fundamental principles should be recognized in the constitution. In this favored metropolis, everything was enjoyed that was wanted by the proposed amendment. The consequence was, that no people contributed more liberally, because they contributed voluntarily. He referred to the controversy between Mr. Barnard and Mr. Robinson. The latter said to the former that he wanted nothing but voluntary contributions. This looked like liberty of conscience. Such liberty he hoped would prevail throughout the Commonwealth, as it did in this metropolis. Mr. L. said the state of religion in Rhode Island had been unjustly represented the other day by the gentleman from

Salem. He believed no part of the country was more blessed by the spirit of religion. Last year two thousand persons were added to the churches, and he believed there was as great a proportion of real Christians there as in any other part of the country. He believed that in this Commonwealth, if compulsion was not used, men would give twenty dollars where they now give five, for the support of religion. He hoped therefore the amendment would prevail.

Mr. COLBY of Manchester said he hoped the amendment would not prevail. A great deal of speculation would be the consequence. The town in which he lived had lost \$10,000 by the law of 1811. Sectarians came there with their certificates of membership, selling them for a quarter of a dollar apiece; and if they could not get that they would let them go for ninepence.

The question was then taken by yeas and nays upon the amendment offered by Mr. CHILDS, and decided in the negative.

*Yeas*—Messrs. Aldrich, E. Allen, Almy, Anthony, Arms, Atherton, Bachelder, J. Baldwin, T. Baldwin, E. D. Bangs, Barker of Methuen, Enoch Bartlett, Barrett, Bassett, Beach, S. Boyden, Brownell, Sam'l Bullock, Bugbee, Canedy, Chamberlain, Childs, J. Y. Clark, Collamore, L. Cook, Crandon, C. Cummings, Daggett, D. Dana, P. Dean, Dearborn, Dunbar, Dunham, B. Ellis, Evans, Farnham, Farwell, Felt, S. Field, R. Field, Fish, N. Fisher, Forward, Fowle, Frink, Fuller, Gale, Z. Gates, D. Gray, E. Green, Gregory, D. Hale, S. Hall, B. Hall, H. Hamilton, T. Harris, Hazard, Hearsey, Hill, J. L. Hodges, A. Holmes, I. Houghton, Hull, C. Hyde, Kempton, Kent, Kittredge, B. Knight, Knowlton, J. Leonard, Lester, H. Lincoln, T. Lincoln, L. Lincoln, Lovejoy, Makepeace, Martin, Melville, Miller, D. Mitchell, Morse, Enoch Mudge, Ezra Mudge, Nelson, Nickerson, Nichols, Nye, Olney, Page, L. M. Parker, Parks, Pickens, Picket, L. Pierce, Pierson, M. Phelps, A. Porter, C. Powers, S. Pratt, Reynolds, Rider, D. Russell, J. Russell, A. Sampson, Seaver, Shepherd, Sibley, S. Sisson, H. Slocum, B. Smith, C. Smith, P. Sprague, J. Spurr, F. Stebbins, L. Stebbins, Stone of Stow and Boxborough, Storrs, Talbot, R. B. Thomas, A. Thompson, T. Thompson, jr., Thurber, Tillinghast, Tinkham, Townsend, Tufts, Tyler, J. Wade, Walter, Waterman, Wheeler, W. Whipple, E. Whipple, N. W. Williams, S. Willard, Windsor, Wm. Wood.—136.

*Nays*—Messrs. Abbott, Josiah Adams, J. Allen, P. Allen, Allyne, Alvord, Apthorp, W. Austin, J. Bacon, Jos. Bacon, Bailey, Banister, R. Bangs, Z. Barker of Andover, G. Barstow, G. Barstow, jr., G. Bartlett, A. Bartlett, B. Bartlett, W. Bartlett, J. Bartlett, jr., Billings, G. Blake, J. Blake, jr., W. Blanchard, jr., J. Bond, G. Bond, Bowdoin, Bowman, Boylston, Boyse, Bramhall, P. C. Brooks, S. Brooks, R. Bullock, C. Burts, Cary, Cheney, J. Clark of Ward, J. Clark of Waltham, Cleaveland, Colby, Coolidge, Conkey, Conant, Cotton, Crehore, Crocker, Cutler, S. Dana, D. Davis, N. M. Davis, J. Davis, Dawes, R. Dean, Derby, Dewey, E. Dickenson, E. Doane, J. Doane, J. C. Doane, Dodge, S. Draper, jr., J. Draper, W. Dutton, D. Dutton, Eames, Edwards, W. Ellis, R. Eels, Endicott, Estabrook, Fay, J. Fisher, I. Fisher, Flint, Fobes, Foote, Foster, Fox, Frazer, J. Freeman, R. Freeman, S. Freeman, French, H. Gardner, A. Gates, Gibbs, Godfrey, J. Green, Greenleaf, Gurney, E. Hale, N. Hale, N. Hall, A. Hamilton, W. Harris, Heard, Hedge, Hills, Hinckley, S. Hoar, S. Hoar, jr., Holden, Hopkins, N. Houghton, Howes, S. S. Howland, Hoyt, S. Hubbard, E. Hubbard, Humphrey, W. Hunewell, J. Hunewell, W. Hunt, C. Jackson, J. Jackson, A. Jewett, J. Jewett, Jones, Judd, Kasson, Kellogg, J. G. Kendall, James Keyes, John Keyes, E. King, J. G. King, Knowles, Lawson, Lathrop, L. Lawrence, B. Lawrence, Leach, Leland, M. Little, J. Little, J. Lock, John Locke, Longley, Low, J. Lyman, Marston, T. Mason, Messenger, Morton, J. Noyes, N. Noyes, Oakes, Paige, J. Parker, Parris, Pelham, Pickman, A. Pierce, V. Pierce, E. Phelps, J. Phillips, W. Phillips, Phipps, Pike, Pomeroy, Pope, M. Porter, S. Porter, B. Pratt, N. Pratt, Prescott, J. Prince of Boston, Quincy, Rantoul, J. Reed, S. Reed, Reeves, J. Richards, N. Richards, E. Richardson, J. Richardson, Joseph Rich-

ardson, Robbins, B. Russell, Saltonstall, E. Sampson, Sanger, Sargent, Sanders, Saunderson, Savage, Sawyer, Shaw, Shepley, Shillaber, A. Smith, Starkweather, Stearns, Stickney, J. Stone of Hardwick, Joseph Story, J. Story, 4th, Stowell, Sturgis, R. Sullivan, Wm. Sullivan, Taft, Z. Thompson, Thorndike, C. Tilden, J. Tilden, Torrey, Trowbridge, Trull, Tuckerman, Turner, Varnum, N. Wade, Wakefield, L. Walker, Walton, A. Ward, Ware, R. Webster, D. Webster, Webber, J. Welles of Boston, J. Wells of Williamsburg, S. A. Wells, A. Whitney, J. Whitney, W. Whitae, S. White, C. White, A. Whitman, J. Whitman, D. Whitman, Whiton, Whitaker, Wilde, E. Williams, Willis, Winship, E. Wood, J. Wyles, Young.  
—246.

The question recurring upon the third resolution, Mr. FLINT of Reading moved to strike out the words "and unincorporated."

Mr. JACKSON of Boston said he had been examining the resolution with a view to putting it into form for submitting it to the people, and he found that it contained nothing that was not in substance already in the constitution. It was undoubtedly the intention of the committee to make an alteration in this part of the constitution, to make it conform to the alterations proposed in another resolution; but that resolution being negatived, the present became inoperative. The only new principle which would seem to be introduced was, that the Legislature should have the same power to provide for the duties of unincorporated societies, as for those of incorporated societies. This the Legislature had already; for the constitution says *religious societies*, and this includes all religious societies, whether incorporated or unincorporated. Before the law of 1811, no unincorporated societies were acknowledged by the constitution; but that law having recognized them, the provision of the constitution must apply to them. Some gentlemen might think that the law of 1811 should be incorporated into the constitution; but in that case no power would remain to future Legislatures to remedy any grievances, evasions, or abuses, that may grow up under it. Some had praised that law and others had censured it. He had had fears of its effect, but it had not operated as he had apprehended, and no great evil had flowed from it. Ill effects may, however, take place hereafter, and it was wiser to leave the power with the Legislature to provide a remedy for them. He did not want to introduce a clause to restrain the Legislature from altering their own law or even repealing it, if circumstances should render it expedient. If he was right, however, in his first position, that this resolution made no change, he hoped the gentleman would withdraw his motion, and his purpose would be effected by the House refusing to pass the resolution to a second reading.

Mr. BALDWIN of Boston moved to amend by inserting the following, viz: whenever any person shall become a member of any religious society, corporate or unincorporate, within this Commonwealth, such membership shall be certified by a committee of such society, chosen for this purpose, and if filed with the clerk of the town where he dwells, such person shall forever after be exempted from taxation for the support of public worship and public teachers of religion in every other religious corporation whatsoever, so long as he shall continue such membership. Mr. B. observed that this amendment was contained in the second section of the act of 1811.

The motion was determined by the president to be out of order, not having passed through a committee of the whole.

Mr. BALDWIN said he would be governed by the decision of the president. The question on this amendment would try the sincerity of the gentlemen who say the law of 1811 will never be repealed. He apprehended the gentleman from Boston was mistaken in saying the constitution never acknowledged unincorporated societies until this act. The constitution did acknowledge them until the decision in the case of Falmouth. He would move to go into committee of the whole if there was no other way of ascertaining the sense of the House on the amendment.

Mr. BLAKE of Boston said the gentleman from Boston (Mr. JACKSON) was correct in saying that the words *incorporated or unincorporated* were adopted by the select committee, in connection with the other amendments proposed. There was another alteration proposed in this resolution, which had escaped the gentleman, that of substituting the word Christian for protestant, in order to put Catholics on the same footing with other Christians.

Mr. JACKSON said he intended to mention that the motion made by the gentleman from Concord on a former day, might be renewed in relation to the change of *protestant* to *Christian*.

Mr. STORY of Salem said he should oppose striking out the words *unincorporated*. For thirty years there had been a construction that "religious societies" in the constitution included unincorporated as well as incorporated societies. There had been a case in which it had been decided upon solemn argument and upon a review, that this was the intention of the constitution; and this construction continued to be acted upon until the case of Barnes *vs.* the first parish in Falmouth, when a different construction was adopted. He did not hesitate to say the first was a reasonable and fair, if not a legal construction, and he chose to have the word *unincorporated* inserted into the constitution to bring it back to the construction originally given to it. He would not leave the subject in the power of the Legislature. As long as the law of 1811 existed, this construction was maintained; but the Legislature might repeal the act to-morrow. Formerly there was hardly an incorporated society along the whole seaboard. Wherever public worship was maintained, he wished the members of unincorporated societies to have the same rights as those of incorporated societies, of having the taxes paid to the persons on whose instruction they attended. There were objections to the amendment offered by the gentleman from Boston, (Mr. BALDWIN)—it would be liable to abuse. He would do no more than recognize the principle that unincorporated societies may exist, leaving the regulation of them as it was before 1810. The facts, whether there was a minister, or a religious society, would be determined by a court and jury. There would be no evil in putting unincorporated societies within the pale of the constitution. It was of vast consequence to satisfy a large portion of the community, that their religious rights stand on the same foundation as those of other denom-

inations. It would create great harmony. He was in the speaker's chair when the law of 1811 was passed. He never saw greater excitement than existed at that time; but it had very much gone down. The first section of the act of 1811 would not be liable to abuse, but the one proposed as an amendment was objectionable for that reason. It would not be sound policy for those who think religious worship ought to be maintained, to remove all the power of regulation from the Legislature. There was a jealousy that Congregationalists have views of aggrandizement unfavorable to the minority. He did not believe such views were entertained by the Congregational denomination, but he would prevent any suspicion of the kind. He would go as far as any one to allay the excitement which had been produced. There was reasonable ground for the excitement when the construction of the constitution which had prevailed for thirty years was overturned in 1810. He asked if gentlemen were willing to have this excitement go on.

Mr. NICHOLS of South Reading moved an amendment similar to the proposition made afterwards by Mr. FAY as a new resolution. It was decided to be out of order, not having been in committee of the whole in the same form as now moved.

Mr. HOAR moved an amendment, proposing to substitute *Christian* for *protestant*. Decided to be out of order for the same reason.

Mr. BALDWIN moved that the present resolution should lie on the table, in order that he might move to have his proposition committed to a committee of the whole. Negatived.

Mr. VARNUM said if he had not been assigned to a duty which was incompatible with his taking any part in the debate, he should not have had occasion to detain the Convention at this late period. He would make no professions of his regard for religion, he was willing that his conduct should speak for itself. Nor would he make any invidious distinctions between the different sects or denominations of Christians in the Commonwealth. He wished to live in fellowship with them all as far as their principles were consistent with pure morality and the good of society. He wished that gentlemen would all unite and adopt something that would give satisfaction to all denominations. For this purpose he hoped they would do away all technical difficulties, and give a fair discussion before the Convention to the proposition of the gentleman from Boston (Mr. BALDWIN.) It was a subject dear to the people at large, and they had expected that it would be fully deliberated on. It was for the benefit of all parties that we should act with that spirit of conciliation that all might go home satisfied. If there was any difficulty in the third article, now was the time to correct it. As to the first part, all agree in what is our duty in relation to public worship. We go along together until we come to the difficulties arising from the difference of sects and denominations. He wished that everything like distinction might be done away, and that we might come together like a band of brothers. If there is a difficulty in the constitution, why not cure it? What has been already done, only places

the thing where it now stands. It has been decided by the supreme court that before the law of 1811, no society was within the meaning of the article, unless it was incorporated. It had been the practice to tax every person, in the parish where he lived, however much he might pay for the support of his own teacher. After burdening the parishes with collecting from persons belonging to other societies the ministerial taxes assessed on them, a lawsuit was often necessary to restore the money to the religious teacher, to whom it was appropriated. He alluded to a case, in which a man was taxed four dollars, which he paid to the parish treasurer, and it was only after a series of lawsuits, which lasted four years, at an expense of one hundred dollars to him, and as much more to the parish, that he succeeded in having it appropriated to the teacher of his own society. He contended that every person should be taxed only by their own denomination, and that the parish ought not to be put to the trouble of levying and collecting a tax, nor the religious teacher, or the person paying it, to the trouble of getting the money back. He thought, therefore, that the proposition of the gentleman from Boston ought to have a fair hearing. The law of 1811 had given relief, but it was only a law, and if he could judge from the opinions that had been expressed, attempts would be made to repeal it, and to place the subject on its former footing. He asked why the towns of Boston, Salem, and Newburyport should have an exclusive privilege. What objection was there to making that law a part of the third article? It had been contended by many gentlemen that it would never be repealed. Make it a part of the constitution so that it cannot be repealed—the people would be satisfied and it would do no harm to anybody. He was astonished that so many gentlemen from the town of Boston were opposed to everything that gives full religious toleration. He did not know why any gentleman from Boston, Salem, or Newburyport should oppose even the proposition of the gentleman from Pittsfield. But he (Mr. V.) thought that was going too far. He was surprised to hear his honorable friend from Boston on the right of the chair (Mr. PHILLIPS) the other day, invoke those of the Congregational order to come round and support the standard of their fathers. He did not believe that any prayers of that kind would be heard. He was sorry to hear the able, honest and candid gentleman from Concord express the opinions he did the other day. He esteemed him for his abilities and his candor. He told us fairly that the only true way was to tax every person within the parish lines and to let persons of the different denominations scramble for their share of it. He admired the gentleman but abhorred the principle. It put the parish to the expense of getting the money, and persons of other sects to the difficulty of getting it back again. It was the same principle which in other countries had brought the guillotine, rack, and faggot into operation. The gentleman did not mean it; he knew, and was willing to acknowledge the fairness of his motives, but it was *his* duty to judge of the principle. He never was better pleased than when the honorable chief justice

and his honorable associate on the bench, the other day came forward and in so manly a manner advocated the rights of conscience and universal toleration. If their language on that occasion was recorded in letters of gold and written up on every man's door, it would teach a most useful lesson to the people of this Commonwealth. He was happy also to see the reverend gentlemen of the Congregational order, from Boston and Chelsea, disposed to do everything in their power to promote the desirable object. He thought that everything like an intolerant spirit in religion was fast doing away, and he trusted that before long, men of all denominations would be willing to worship together. He wished to do everything to promote this harmonious spirit, and to adopt a principle which would permit men of all parties to retire from this Convention satisfied.

Mr. WALKER of Templeton said the subject had so long engaged the attention of the House, that he thought gentlemen were prepared to come to a decision. He hoped the resolution would pass. To put unincorporated societies on the footing of those which are incorporated would have a conciliatory tendency, and he thought it would be for the interest of the community at large. It would set at rest the future legislation, on what should be considered a society at law. Engrafting this principle into the constitution would induce persons opposed to the article as it stands, to believe that some attention was paid to their wishes.

Mr. WILLIAMS of Beverly considered it his duty to give his last testimony on this subject. This resolution met his approbation as far as it went. But he did not believe that it would conciliate the feelings of the people of the Commonwealth. It was but one step, and others must be taken before the people would be satisfied. In the former debate, gentlemen had expressed their satisfaction with the law of 1811. He thought it important that the principle of that law should be adopted in connection with this resolution.

The question was taken and the resolution passed to a second reading—211 to 72.

The fourth resolution, disagreed to in committee of the whole. was read as follows:

4th. *Resolved*, That it is proper and expedient further to alter and amend the constitution so as to provide, that all moneys paid by the citizen to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be applied to the support of public worship where he shall attend, or the public teacher or teachers on whose instruction he attends, whether of a society incorporated or unincorporated, provided there be any on whose instruction he attends; otherwise it shall be paid towards the support of public worship and of the teacher or teachers of the parish or precinct in which the said moneys are raised. Provided, however, that any inhabitant of any parish, or member of any religious society, whether incorporated or not, may at all times unite himself to any society within this Commonwealth, incorporated for the support of public worship, having first obtained the consent of such society with which he shall so unite himself; and having procured a certificate, signed by the clerk of such society to which he hath so united himself, that he hath become a member thereof, and filed the same in the office of the clerk of such parish or society to which he hath belonged and in which such moneys are raised, he shall not, while he shall remain a member thereof, be liable to the support of public worship or of any

public teacher, except in the society of which he hath so become a member, but shall be holden to be taxed in the society with which he hath so united himself, until he shall cease to be a member thereof.

Provided, also, that whenever any number of persons, not less than twenty, shall have associated themselves together for the purpose of maintaining public worship and public religious instruction and shall have made and signed an agreement in writing under their hands declaring such purpose, and shall have caused a copy of such agreement to be filed in the office of the clerk of the town or towns to which they shall respectively belong; they shall, in regard to the support of public worship and the maintenance of public teachers, have all the powers and be subject to all the duties of parishes within this Commonwealth; and all persons so associated, while they continue members of such society, shall not be liable to be taxed elsewhere for the support of public worship or of any public teacher of piety, religion, and morality. And any person may become a member of such society, so united and certified as aforesaid, if such society shall consent thereto, and after he shall have procured and filed in the office of the clerk of the town to which he shall have belonged, a certificate, signed by a committee, or the clerk of such society of which he shall have so become a member, that he has become a member of such society, and attends public worship with them, shall not be liable to be taxed elsewhere for any money raised after he shall have filed such certificate, so long as he continues a member thereof and shall attend public worship with such society; and shall, while he is a member thereof, be holden to contribute to the support of public worship and of the public teacher or teachers in said society.

Mr. STURGIS moved an indefinite postponement of the resolution. The motion was carried, 167 to 144.

The fifth resolution was then read, as follows:

5th. *Resolved*, That it is proper and expedient further to alter and amend the constitution so as to provide, that every person shall have a right in criminal prosecutions to be fully heard in his defence by himself and his counsel.

The resolution passed—184 to 70.

The sixth, seventh, eighth and ninth resolutions, which were disagreed to in committee of the whole, were successively read as follows:

6th. *Resolved*, That it is proper and expedient further to alter and amend the constitution so as to provide, that armies ought not to be maintained except in conformity to the constitution of the United States.

7th. *Resolved*, That it is proper and expedient further to alter and amend the constitution so as to provide, that no subsidy, charge, tax, impost, or duties ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people or their representatives.

8th. *Resolved*, That it is proper and expedient further to alter and amend the constitution so as to provide, that in time of war soldiers' quarters ought not to be made but by the civil magistrate in a manner ordained by law.

9th. *Resolved*, That it is proper and expedient further to alter and amend the constitution so as to provide, that no person can in any case be subjected to law martial or to any penalties or pains by virtue of that law, except those employed in the army or navy and except the militia in actual service, but by legislative authority.

These resolutions were severally refused a second reading without a division.

On motion of Mr. STURGIS, in pursuance of notice given yesterday, the fifth rule of the fourth chapter, which required that resolutions proposing any alteration in the constitution should be read on two several days, was rescinded.

It was ordered that the resolutions relating to the declaration of rights, be now read a second time.



The second resolution was then read the second time and passed.

The third resolution was read.

Mr. FLINT moved to amend by striking out the words "and unincorporated." He made some remarks in support of the motion, and Mr. VARNUM spoke against it.

The motion was lost.

Mr. FAY moved to amend the resolution, so as to provide that all moneys paid by the subject, for the support of public worship and of the public teachers of piety, religion and morality, shall, if he request it, be applied to the public teacher or teachers, if any, on whose instruction he attends, whether of the same, or of a different denomination from that in which the money is raised. His purpose in moving the amendment was to place Congregationalists on the same footing with persons of other denominations, and to make the third article consistent throughout. The article as it now stands compels a person to remain united with a society, differing from him in sentiment, or to become of a different sect. He proceeded to show that there are differences of opinion between persons of the same denomination, more material than those which divide most of the denominations.

Mr. SALTONSTALL said this was one of the most important questions which had been proposed in relation to the third article. If the amendment was adopted, it would reduce to a nullity all that had been done—it would make the third article a dead letter. It was made the duty of the Legislature to call on societies in their corporate capacity to make provision for the support of public worship. But this proposition would put it out of the power of such societies to make any contract with their minister. It was the duty of parishes to support a religious teacher. Suppose they make a contract for this purpose. One man goes away to one parish—one to another—the increased burden induces another to go away, until none are left, and what becomes of the contract? He asked gentlemen to reflect on the situation in which it would place all parishes. It has been heretofore necessary for a person who wished for any reason to be set off from one parish to another, to apply for leave to the Legislature. But this amendment would make this application unnecessary, and would destroy all permanent distinction of parishes.

Mr. ABBOT rose to a question of order. He said that this proposition had not been discussed in this form in committee of the whole.

The motion was decided to be out of order.

The question was then taken on the third resolution and it passed.

The fifth resolution was read a second time.

Mr. SHAW said that when this resolution passed on the first reading it was not well understood, and when it was discussed in committee of the whole, it was in a thin House. He proceeded to recapitulate the arguments against the resolution.

The question was taken and the resolution passed—134 to 111.

Mr. JACKSON, from the committee for reducing the resolutions to the form in which they are to be submitted to the people, made several reports which were laid on the table.\*

Mr. FAY offered the proposition he had made as an amendment, in the form of an independent resolution, and moved that the Convention go into committee of the whole for the purpose of considering it.

MESSRS. STURGIS, STARKWEATHER and THORNDIKE, opposed the motion, and MESSRS. BALDWIN, LINCOLN, DANA and STORY, spoke in favor of it.

The motion was agreed to.

Mr. BLAKE moved that the proposition submitted by Mr. BALDWIN be referred to the same committee of the whole.

Mr. BOND supported the motion and it was agreed to—159 to 129.

It was ordered that the two propositions be made the order of the day for Monday at 11 o'clock.

It was ordered that when the House adjourned it should adjourn to 9 o'clock on Monday morning.

Mr. ELLIS, from the committee on the Pay Roll, reported the roll including Monday next, for travel and attendance, amounting to \$124 dollars travel, and \$50,800 dollars attendance.

It was ordered that the roll lie on the table till Monday.

Mr. WALTER from the committee on Accounts, reported that the volume containing a report of the debates and proceedings of the Convention could be obtained for the members at the rate of \$1.37½ cents each.

Whereupon it was ordered that a sufficient number of copies be furnished.

Leave of absence was granted to Mr. POPE of Sandwich, Mr. HOUGHTON of Barre, Mr. BULLOCK of Royalston, Mr. MATTOON and Mr. Scott of Amherst.

The House then adjourned.

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#### MONDAY, JANUARY 8.

The House met at 9 o'clock and the journal of Saturday was read.

On motion of Mr. VARNUM, the pay roll was recommitted with instructions to the committee to make an alteration so as to include to-morrow.

Mr. VARNUM offered the following resolution, which was voted unanimously, and ordered to be entered on the journals, viz.:

*Ordered*, That the thanks of this Convention be presented to the HON. ISAAC PARKER, for the exertions, attention, ability, and impartiality exhibited by him whilst he has presided over their deliberations.

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\* [The resolves and amendments reported at this time, are printed in the form in which they passed, at the end of the proceedings in the Convention. See page 612.]

The **PRESIDENT** made the following address in reply to the vote of thanks :

*" Gentlemen of the Convention :*

"I have received, with great sensibility, the testimony of your approbation of my conduct as your president, on the motion of a gentleman whose long public services in high stations, and whose able exertions in this Convention, entitle him to the respect of his country.

"I was not deceived in anticipating that faithful endeavors to discharge the duties assigned me by your choice, would be received with candor, although my inexperience should occasion errors and mistakes.

"My reliance upon the advice of gentlemen, whose talents have been long practised in the forms of regulating deliberative assemblies, has not been misplaced—from them I have received powerful aid and support. To those gentlemen I tender my thanks for sharing so largely in the labor of presiding over your deliberations.

"To all, I offer my respect and gratitude for that order and decorum which, in so numerous an assembly, could have been maintained only by individual courtesy and respect for the character of the people whom you represent.

*" Gentlemen*—I congratulate you upon the approach of the happy termination of your arduous session. The importance of your work, will not, by an intelligent people, be estimated by its visible product in actual changes of the constitution.

"We were sent here to revise a constitution dear to the people, and to amend it only where amendments should be found necessary.

"The reluctant spirit with which the people sent us here, has been duly estimated. You have given the constitution a faithful revision in all its parts : and have left its great principles and its chief organization undisturbed. The work of preservation, if less difficult, is not less important, than the work of creation.

"When posterity shall see that the frame of government, which was formed by the great men who composed the Convention of 1780, was carefully and critically revised by those who constitute this assembly in 1820, it will be difficult to shake their confidence in a system which shall come to them so recommended.

*" Gentlemen*—If you have seen disadvantages in so numerous a representation of the people, for purposes like those about which you have been engaged, it should not be forgotten that they will be counterbalanced by the general confidence which the opinions of so numerous a body will be likely to inspire.

"Every town and district, with one or two exceptions, within our populous and flourishing Commonwealth, has had an opportunity to be heard by its delegates, upon the interesting questions which have been discussed. These delegates will carry home to their constituents the reasons and arguments which led to the recommendation of any change as well as those which prevented the adoption

of such as may have been desired by some. The people will thus be able to judge, upon a full knowledge of all the motives which have had their influence in this assembly—and will decide with an intelligence worthy of their character and their advantages.

“That the harmony, good feelings and conciliatory temper, which have prevailed here, may extend through the Commonwealth, is my ardent desire and prayer. That party spirit, whose crest I am proud to say has not been, on this occasion, raised within these walls, may be found to have departed from our Commonwealth, and to have left in its place mutual good will and a genuine love of country, is, I have no doubt, the sincere wish of us all.

“I pray the Almighty Preserver of communities and men, that you may all return in safety to your families and friends—carrying with you, and finding there, health, peace and happiness;—and that your children’s children may have occasion to bless your memories, for the legacy of law, liberty and prosperity, which, having received from your fathers, you have not only preserved inviolate, but will have transmitted, secured, and improved, to the generations which succeed you.”

On motion of Mr. VARNUM, ordered that the President’s address be entered on the journals of the Convention.

The resolutions reported by the committee for reducing the amendments into form, were taken up.

The first resolution was read, and passed over for the present.

The second resolution was read, which contains a provision that the votes of the people on the amendments shall be given on the second Monday of April.

Mr. BOYLSTON of Princeton moved to strike out the second Monday of April, and insert the first Wednesday in May, because of the excitement from the April elections, and with a view of giving the people more time.

Mr. LINCOLN of Worcester said it would be proper to have the people act as promptly as possible, consistent with due deliberation, upon the alterations proposed to them. The time recommended by the committee would not interfere with the business of the people in the country; and the objection made by the gentleman from Princeton, respecting the excitement of the people, would apply with equal force to the day proposed by him, because the election of representatives takes place in May.

Mr. JACKSON, chairman of the committee, observed that an earlier day than the one proposed by the gentleman from Princeton was necessary, in order to give time for making the returns. It was also thought by a gentleman near him from the country, that the first Wednesday in May would be inconvenient on account of its succeeding immediately after the general muster day.

Mr. ARTHUR of Boston remarked that the second Monday in April would give an opportunity of voting to one class of our citizens, who were usually absent in the month of May.

On a division of the motion the question was taken for striking out, and decided in the negative.

The third resolution was read, which contains a provision for appointing a committee of the Convention to meet after the votes shall have been given in, to receive and examine the returns, and certify them to the governor and council, and also to the General Court.

Mr. QUINCY of Boston moved to strike out this provision and insert instead, that it shall be the duty of the Secretary of the Commonwealth to lay the returns before the Legislature at their session next after the votes shall be returned. Mr. Q. offered this amendment, because a committee of the Convention would be an irresponsible body.

Mr. DANA of Groton wished the chairman of the select committee to state the reasons for the mode proposed in the resolution.

Mr. JACKSON said the committee were of opinion that the regular way would be for the whole Convention to come together again, and receive the report of the committee proposed to be appointed. But this would occasion great expense and trouble for a matter of form, as the Convention could do nothing but count the votes. The next question was, who should attend to this duty. It was thought that the Convention had no right to impose the burden on the governor and council. The General Court was then proposed; and perhaps no great inconvenience might arise from committing the business to them; but it was thought doubtful whether we had a right to impose this duty on them, and it was uncertain in what manner they might treat the proposition. It seemed necessary, however, to delegate to somebody; and it was thought that we had more right, if we had any, to delegate to a part of our own body. It was proposed that the committee should be a large one;—say two from each senatorial district. The select committee were aware of the objection made by the gentleman from Boston, (Mr. QUINCY,) and it was suggested that the chairman of the committee might be empowered to call the Convention together, in case any difficulty should occur. It was considered that there would be no great risk in reposing confidence in such a committee.

Mr. DAWES of Boston said if this objection to a committee of its not being a responsible body, had not come from a gentleman for whom he had a high respect, he should have called it a fastidious objection.

Mr. DANA argued that the act of the Legislature having given the Convention power as to the end, the same was to be implied in regard to the means, and he thought the mode pointed out in the resolution was the best. He remarked that they were sent there to revise the constitution. It had undergone a grand revision. There had been a grand development of the principles on which it was framed, and if not a single amendment had been adopted by the Convention, the people would have been satisfied. They would be glad that the constitution has been found so perfect. He thought it would be more satisfactory to the people to have a part of the

same persons receive the returns who were appointed to make the revision.

Mr. DUTTON of Boston said he apprehended that his colleague (Mr. QUINCY) was mistaken in respect to responsibility. If they had no right to impose on the Legislature the duty of receiving the returns, the Legislature would be under no obligation to perform it. The Legislature, therefore, would be an irresponsible body in relation to this subject. The Convention ought not to meet again, and they must delegate the duty to somebody. A committee of the Convention would be responsible to the people, in the same manner that the Convention itself was.

Mr. LINCOLN of Worcester said the amendment was objectionable, because it proposed to commit the duty to an extraneous body. The people had not intrusted the Legislature with any power respecting the amendments to the constitution, and the whole object of the Convention might be defeated by adopting the present proposition of the gentleman from Boston.

Mr. QUINCY said the only question was, whether this committee to be appointed was a responsible or irresponsible body. Giving that committee authority to call the Convention together, did not cure the difficulty; they might or might not do it, and were under no responsibility in relation to it. He was not convinced by the arguments in support of the resolution, but he saw the general impression was in its favor, and he should not urge his proposition any further.

The question was taken on the amendment, and decided in the negative.

The blank for the time of the meeting of the committee was filled with the fourth Wednesday of May next.

A fourth resolution, respecting the mode of voting upon the amendments, was read.

Mr. D. DAVIS of Boston wished that some mode might be pointed out for making known to the people the amendments which should be approved by a majority of them.

The fourth resolution was recommitted, 121 to 28—with instructions to report on the mode of giving official notice to the people of the amendments which may be ratified.

The other resolutions were laid on the table in the mean time.

We have mentioned such parts only of these resolutions, as were the subject of discussion; as we intend to give them as afterwards amended and adopted, in connection with the amendments reduced to form.\*

The resolution to take away the power of proceeding in criminal cases by information, was taken up.

Mr. HINCKLEY said that the select committee had had the subject under consideration, and had come to the result presented by the resolve. They were of opinion that by the common law as it was

\* [See page 612.]

established in the Commonwealth, the attorney or solicitor general may file an information at pleasure against an individual for any crime by which he may be put at hazard of losing his life, liberty or property, and that this was a dangerous power, and one which ought to be guarded against in the constitution. They did not find that there had been any abuse of the power, nor did they apprehend any danger at present, but it was an arbitrary power, capable of being abused, and which ought not to exist in a free government. A citizen of the fairest reputation may be brought into court for trial at the pleasure of the prosecuting officer, when, if the complaint were brought before a grand jury, it would be suppressed, and the mortification and distress of a public trial prevented. It is proposed that the jurisdiction of justices of the peace and the law martial shall remain unaffected by the alteration, and subject to the discretion of the Legislature. It is also proposed that the Legislature shall have authority to grant the power to the prosecuting officers of the Commonwealth, of proceeding by information in specified cases.

Mr. WEBSTER said he was doubtful, whether the resolution would not include cases of quo warranto, and some other cases, where filing an information was a proper course to be pursued. He therefore moved to strike out the words "loss of life, liberty or property," and to insert instead, the words "imprisonment or other ignominious punishment."

The amendment was adopted, and the resolution, thus modified, was as follows, viz. :

*Resolved*, That it is expedient to amend the constitution in the declaration of rights so as to provide that no person shall be subjected to trial for any crime or offence, which, on conviction, may expose him or her to imprisonment, or ignominious punishment—but by presentment or indictment of a grand jury—except in cases which are or may be otherwise provided for by the statutes of this Commonwealth.

The resolution passed as amended.

Mr. MARTIN of Marblehead offered a resolution that it is inexpedient to make any other alterations in the constitution, except those which have been adopted respecting oaths and subscriptions, and respecting the mode of making future amendments.

Decided to be out of order, being repugnant to almost everything that has been before determined.

A resolution offered several days since by Mr. VALENTINE of Hopkinton, proposing to alter the constitution so as to have sheriffs elected by the inhabitants of the several counties, was referred to the same committee of the whole to whom was referred the resolution offered by Mr. FAY on Saturday.

A resolution providing for counsellors being qualified in the recess of the Legislature, by the governor, alone, or lieutenant governor, and any one of the counsellors, previously qualified, was referred to the same committee of the whole.

This resolution had been agreed to in the committee of the whole

on the lieutenant governor and council, but the subjects referred to that committee having been recommitted to another committee, all its proceedings became a nullity.

A report of the committee for reducing amendments to form, containing the article relating to the political year, and to the time for holding elections, was read.

Mr. VARNUM said that in his opinion it would be proper to have this article go into operation in one year, instead of two. He thought it would be more congenial to the wishes of the people. He doubted the right of extending the term of office of persons chosen for one year only. He moved to amend the article, so that it should go into operation upon the first Wednesday of January, 1822, and the State officers chosen next spring should continue in office until that time.

Mr. JACKSON said the committee, in making up their opinion, were at first inclined to have this article go into operation immediately; so as to have the first election under it in November next. The reason for changing their minds was because this year the valuation would be taken. The Legislature in May would appoint the committee, and in January would settle the valuation. This would be the course whether the article should be ratified or rejected; if it should provide for holding the first election in November, 1822. It was thought proper that the same General Court which began to make the valuation, should complete it. It was considered inexpedient to begin the new organization of the government in an extraordinary year of valuation. It was suggested that the Legislature might have an extra session in the autumn, to settle the valuation, but this would be attended with great expense, and there would be hardly time for the committee to make up their returns. If the first election was to be held next November, the Legislature would have a great deal to do previously in classing the towns, and it was possible that they might not have the census, officially, in season for that purpose. It was necessary to do one or the other; either to extend to eighteen months the term of office of the persons elected next spring, or to abridge it to six months. There seemed to be no objection to the right of the people to extend the term, though there might be with some in regard to the right of abridging the term. The General Court next chosen, would go on just as if no alteration had taken place, and there would be no need of a May session in 1822.

Mr. VARNUM said that every person accepting any office next spring, would know that it might expire in six months. If the term was extended to eighteen months, many people would consider it a dangerous precedent, and we should hazard the rejection of some of the most valuable amendments. With respect to the valuation, it was impracticable for the same General Court to complete it. If no alteration should be made, the committee appointed by one General Court would make their returns to the next General Court. No difficulty had ever been experienced, in regard to want



of responsibility, from the committee making their returns to the next General Court, instead of making them to the body by which they were appointed.

Mr. LINCOLN of Worcester said he differed from the majority of the committee, though he allowed there was great weight in the arguments which had been urged by the chairman. His reasons, however, were not the same as those advanced by the gentleman from Dracut. It was admitted that we have a defective form of government; we should therefore give the people an opportunity of having a good one as soon as possible. The objections were all founded on matter of convenience. In respect to the valuation, the same difficulty would always exist, unless there should be two sessions. He did not think it would be necessary to have two sessions for that purpose, or he would have opposed the proposition for having all the towns represented every tenth year, on account of the monstrous expense it would occasion to the Commonwealth. There would be no difficulty in the report of the committee on valuation being made to a new Legislature, without having the committee to explain. An invoice was a mere matter of fact, and there were always gentlemen in the Legislature acquainted with this subject. It would be necessary to class the towns before a Legislature could be chosen under the amended constitution, but this was the labor of a day and could be done at the next May session.

Mr. PRÆSCOTT hoped the amendment would not prevail. He said a valuation committee would be appointed by the Legislature next May. The house of representatives would probably be a large one. If this amendment was adopted, the committee would report either to the same General Court at an extra session, or to a Legislature under the new organization of the government. The next General Court would be in many respects differently constituted from the one to be chosen under the amended constitution. They would prefer completing the valuation, and would probably have an extra session in October, for this purpose; and then a new Legislature would be chosen in November, to meet in January. He should be willing to live one year longer under this defective constitution, which had served us for forty years, rather than have the expense of an extra session of the Legislature. He observed in addition, that it would take a considerable time in the May session to arrange the classification of towns.

Mr. SIBLEY of Sutton spoke in favor of the amendment as being favorable to the small towns. He also thought it was important to have this article go into operation as soon as possible, because the defect in the organization of the senate was the principal reason for calling the Convention.

Mr. VARNUM's amendment was adopted—169 to 116.

Mr. VARNUM then moved to fill up a blank for the day of the first election, with the second Monday of November next.

Mr. JACKSON pointed out an inconsistency in saying the article should not go into operation before the first Wednesday of January,

and yet requiring by it that the first election should be on the preceding November.

On motion of Mr. LOCKE of Billerica, the vote adopting the former amendment was reconsidered; and after some debate, on motion of Mr. AUSTIN of Boston, the article was recommitted, in order that the committee should make it conform to the sense of the House, that the first election should take place on the second Monday of November next.

On motion of Mr. WEBSTER, the committee had leave to sit while the House was in session, if it should be necessary.

Mr. STEBBINS of Granville offered a resolution so to amend the constitution, that the salaries of the judges of the supreme judicial court, after the present judges shall have vacated their offices, shall be so fixed that the salary of the chief justice shall never be more than 2500 dollars, nor less than 2000, and that of the justices, not more than 2000, nor less than 1500.

A motion to commit this resolution to the committee of the whole, was negatived.

Mr. SPURR of Charlton offered a resolution providing that the lands belonging to the Commonwealth, situated in the state of Maine, be appropriated to the establishment of a fund, the interest of which shall be distributed among the several towns and districts, according to their population, for the support of the common schools.

Also, another resolution providing that, instead of a registry of deeds for each county, all deeds and conveyances of real estates shall be recorded in each town by the town clerk, who shall never be allowed more than 25 cents for recording each deed.

On a motion to commit the first resolution to a committee of the whole,

Mr. BOYLSTON of Princeton stated that it would be useless to take up the time of the Convention upon this subject, as the lands of the Commonwealth were at present not in a disposable state—being already pledged to the state of Maine for 30,000 dollars, in consideration of their assuming the debts and claims due to certain Indian tribes and others, on the separation of the State. They were to have two years to survey and locate the lands, and afterwards the Legislature of Massachusetts was to be allowed one year more to make their election whether to convey the lands for that sum, or to pay the 30,000 dollars in money. But another very important consideration arises. The American and British commissioners, under the treaty of Ghent, were running the line on that quarter, and it appeared by reports, that the American commissioners had expressed some degree of concession to the British commissioners, whereby the whole might fall within the British lines. Whether that shall be the ultimate decision, or not, would it be advisable to come to any vote upon property in a state of so much uncertainty?

A motion to commit these resolutions to a committee of the whole, was negatived by a large majority.

It was moved that the Convention go into a committee of the

whole, on the resolutions which were committed on Saturday and this morning.

Mr. ABBOT of Westford opposed the motion. He said it would detain the Convention a long time to discuss the subjects referred to the committee, and he thought unprofitably. One of the propositions relating to the third article, had been, in substance, already agitated, and the object of the other was already attained by the law of 1811. What was now proposed was not necessary for the organization of the government, and he hoped the Convention would refuse to go into committee upon it.

The motion was carried—156 to 127; and Mr. WEBSTER took the chair.

The resolution offered by Mr. FAX, for the further amendment of the third article of the declaration of rights, was taken up.

Mr. HOAR was sorry that any gentleman had thought it necessary to bring this proposition before the Convention at this late period. It had been twice substantially before the House, and had been negatived when there were more than a hundred more members present than were now here. But as it had been thought fit to bring up the question, it was necessary to consider what would be its operation. It was a short and plain proposition, and at first view seemed very fair, but it would be found on examination that its effect would be to annul every parish in the Commonwealth. It puts an end to all acts of the Legislature, dividing the Commonwealth into convenient districts for the support of public worship. For what reason was this to be done? It was desirable to some persons to have the power of leaving their parish minister and going to another. This, no doubt, was sometimes a very convenient and pleasant thing, but there were two sides to the question. A parish forms a contract with a minister—an individual votes in making the contract, but the next year changes his mind, and wishes to be liberated. He is only to say he has changed his mind and he is liberated. Would this be borne in any other case? Suppose there was a banking institution in which the individual proprietors were responsible for its engagements, and an individual should withdraw from it and avoid his responsibility? It would be considered a breach of good faith. This provision authorizes every member of a parish, which has a contract with a minister, to go where he pleases, and no tax can afterwards be assessed upon him for fulfilling the contract—this gives a new inducement to another to go—and the corporation may be left without corporators. The minister may sue and get execution against the corporation, but he can get no fruit of his execution—and there is no way in which his contract can be enforced. If all do not leave the parish—suppose only one half leave, those who remain will be compelled to pay a double tax, or to violate their contract. It was said that this might be the effect of the present law. This did not diminish the force of the objection. The law may be modified so as to prevent these consequences, but if the principle is incorporated into the constitution, it

cannot be. It was said that these evil consequences had not resulted from the law. One reason why the consequences of the law had not been felt was, that it was not generally understood. It was generally supposed that to entitle one to leave a parish and withdraw his taxes, he must become a member of a society of a different denomination. But the law had recently received a different construction, which was no doubt correct. It was true that under the law a person who becomes of a different denomination, has a right to withdraw, but this was understood, and the contracts have been made subject to this condition. This provision might be liable to abuses and frauds, but it did not follow that there might not be benefit in the restriction. There were instances in which pretended changes of opinion to avoid taxation, had not availed. He stated an instance of a man who left a Congregational parish, joined a Baptist society and was immersed—and who, on being asked if he had washed away his sins, replied that he had washed away his taxes, which was his principal concern. This declaration being proved, he was still holden to the payment of his taxes in the Congregational parish in which he resided. The resolution, if adopted, would change the condition of all ministerial contracts. Whether it would annul contracts made by bond, he did know, but there might be doubts. It disables a parish from forming a contract which shall be binding upon both parties. Suppose a minister is settled in the usual solemn form to-day, this amendment points out the mode in which any member of the parish may avoid the obligation entered into. It may be all fair in relation to future contracts, but it is not in relation to those now existing. He asked if gentlemen were prepared to adopt such a principle in the constitution. It was of infinite importance, and threatened the most pernicious consequences. There was no adequate reason for the change in the trifling inconvenience that had been felt. He hoped that gentlemen when they considered the thin state of the House, compared with what it was when the subject was before under discussion, would not adopt a measure which must put an end to the ancient mode of supporting ministers, for the very trifling object that is proposed to be gained by it.

Mr. STORY said he had listened with great care and attention to the gentleman who had just spoken, and whom he always heard with pleasure and instruction. If he had failed to convince him by his ingenious argument, it was because he had assumed some things which he, Mr. S., thought were not to be admitted. The assumption is too broad that every member of the parish is bound to contribute to the support of the minister, and that whenever you allow an exception, it impairs the obligation of the contract entered into, and you lay the foundation for destroying the parish. If this was true, the mischief was done already; the constitution now has the principle. The gentleman thought the change would be of pernicious tendency;—if he, Mr. S., thought so, he would be opposed to it, but he thought it would be salutary. This was only

opinion against opinion. The reason why this alteration ought to be made, was on the ground of the indulgence already granted. Had any serious evil grown out of the present indulgence? If there had not, would the evil be increased by giving this principle an equal operation? No gentleman would say that the difference of sentiment was not as great between an Unitarian and a Trinitarian, as between a Trinitarian Congregationalist and a Baptist. Why should not this difference be entitled to the same indulgence? The principle of the constitution is, that the rights of conscience shall be indulged, as far as is consistent with the right of government to require the support of public worship. If the argument that the right of withdrawing from one parish to another, endangers the existence of parishes, is well founded, it prostrates the indulgence already granted. But we have lived under the constitution forty years in which the provision has existed, and it has not proved injurious. The gentleman said that parishes were to be broken up by this amendment. He, Mr. S., held that they were to be preserved by it. By the present constitution, if a person residing in a parish belongs to a society of another denomination, and worships with them, he has a right to withdraw his taxes, but has no right to withdraw them unless he belongs to a society of another denomination. The consequence is, that if a person is disaffected, you drive him to proselyting, that he may form a little society which shall forever protect him and his associates from being taxed in the parish. But this amendment permits him to go to another society of the same denomination—to the neighboring parish—and another man perhaps comes back from the other society. What is lost by one is gained by another, and the balance is nearly equal. It will induce the minister to conciliate the feelings of his parishioners, and to have a stricter regard to the feelings of the minority of the parish, where there is a division of opinion, and to pay an equal regard to the whole of his flock. It will prevent persons playing the hypocrite, by going over for a short time to a sectarian society, to avoid the obligation of paying taxes, and returning to another church of his original opinions. He put it on the ground of right. Why should persons of a different denomination have the indulgence, while it was refused to persons of the same denomination, though the difference of opinion may be greater, and the reason for the indulgence stronger? He granted it would impair the security of present contracts, but it would not prejudice future contracts. It would always be in the power of the minister to require the guaranty of individuals, and if he is a good man there will be no difficulty. He did not say there would be no evils, but he did not believe they would be great. When he recollected that for two centuries, piety and religion had distinguished the people of this State—that the ministers of the gospel had generally been liberally and cheerfully supported—that the people everywhere felt a strong attachment to their clergyman and an interest in his welfare, he could not believe that any parish would desert their minister when

old and grey-headed, and suffer him to go down in sorrow to the grave. It was contrary to our nature, and he had never known an instance of such unnatural treatment. This amendment would have a tendency to strengthen the tie between minister and people, and so far its effect would be salutary.

Mr. FOSTER of Littleton said, that if he believed the public good required a provision of this kind, he should cheerfully give his assent to its adoption. If the case was the same between Christians of the same denomination as between different sects, he should vote in favor of the resolution. He agreed that conscience should be respected, but he thought sufficient provision for it had already been made. He thought that when we said a man might do as he had a mind to, might worship when and where and in what manner he pleased, might enjoy his opinions freely, might embrace the system of Swedenborg and all his nonsense, if he chose, or run after any visionary zealot, no person had a right to complain of the rights of conscience being under restraint. The gentleman talks about the differences between Unitarians and Trinitarians—what have these speculative disputes of ingenious men to do with conscience? He hoped it would not be thought indecorous in him, on account of his being a minister of a Congregational church, to oppose this resolution. He was not acting as a clergyman. He stood on equal ground with other gentlemen and wished to be considered only as the humble delegate of the town he represented. If this provision was to be prospective, he said it would not be quite so objectionable. Future contracts between a minister and his people might be framed with reference to it. Ever since the country was settled, the contract with a minister had been for life; and he wished gentlemen to consider that it was not a trifling thing to a clergyman to be turned out of his living. A great proportion of the Congregational clergy, instead of receiving a large sum when they were settled, have made a contract to have a small sum annually during their life; and if this is taken from them, they will be left without any resource. And what reason is to be assigned by a parishioner for deserting his clergyman? No reason. The constitution is my reason. I am tired of hearing this old worn-out minister. The gentleman from Salem said he had never seen a clergyman deserted in his old age—that it was not in our nature to act with such inhumanity. Unfortunately, the gentleman's experience did not reach to every case. He (Mr. F.) had seen a clergyman deserted in his old age and seen his grey hairs go down with sorrow to the grave. When a proposition was made for giving the Legislature authority to reduce the salary of a judge, the gentleman's sensibility was all alive. It must not be. You are breaking your contract. The faith of the community is pledged, so long as he behaves himself well. He agreed with the gentleman perfectly, only he did not go far enough. Why not extend his protection to a minister of the Gospel? No, let him spend his old age in poverty and distress. After he has spent his best days in the faithful performance of his duties, let his society turn

him off, like an old horse worn out with service. By this resolution, all that a man has to say is, that he has a preference to another minister. All our parish lines are blotted out. The clergyman may have to attend his parishioners in a dozen towns. They will be like the cattle on a thousand hills. Suppose a man should say he did not like the governor, or the judges, and it was against his conscience to contribute to pay their salaries; what is to be done? A man's conscience is quick in politics, as it is in regard to paying his minister. In either case it is a mere matter of money, and there is no conscience about it. He could only hope the resolution would not be adopted.

Mr. NEWHALL of Lynnfield hoped the resolution would be adopted. He thought it the only measure that could preserve the Congregational parishes from a gradual decrease—and in the small towns from annihilation. Besides the complaints against clergymen arising from fanaticism, or from personal prejudices and ill will, there are in almost all Congregational societies persons of respectable character whose sentiments on the great and leading principles of Christianity are not in unison with those of the settled minister, and who for that reason are obliged to neglect attending on his ministrations, and are driven to societies of other denominations. It is well known that nearly all the varieties in the fundamental doctrines of Christianity, are to be found in persons of the Congregational denomination. There are therefore all the reasons for dissenting from one Congregational society and uniting with another, that there can be for going to a society of another denomination. As therefore he wished to see all religious denominations stand upon a level in the enjoyment of religious rights—as he was desirous that there should be no legal hindrance to persons removing their connections from one religious society to another of the same order—and as he believed that such a regulation would tend to promote harmony and friendship among Christians of various sects, he hoped the proposed amendment would be adopted.

Mr. FREEMAN of Sandwich said it was his misfortune to differ from the learned gentleman from Salem in relation to this amendment. He agreed with the gentleman from Concord, that to incorporate it into the constitution would be about equal to an abolition of the third article. He would not go into argument on the question, but would state one or two facts, which he proceeded to relate by way of showing the application and effect of the proposed amendment on certain parishes. Unitarians and Calvinists he considered different sects. He had no interest in supporting this side of the question. If he had acted from a regard to his personal interest he should have spoken on the other side.

Mr. Low of Beverly had already expressed his satisfaction with the law of 1811; but that might be repealed. Before that law there was an inequality of privileges. In Newburyport, Dorchester, and probably twenty other towns, all persons go to what society they please and pay where they go. He would not say how much law

there should be to regulate religion, but what there was ought to be equal in its operation.

Mr. PHELPS of Belchertown hoped the resolution would not pass. It was brought in at the end of the session, after many of the members were gone home, and after the subject had been fully discussed in a full house. He thought it ought not to be adopted in the present state of the house.

Mr. LINCOLN said that originally every parish was of one sect and entertained a uniformity of sentiment. But now there was a great difference of sentiment in almost every town. In some towns there are persons who are obliged to play the hypocrite and associate with a society they do not agree with, or contribute to the support of doctrines they do not believe. What was the condition of almost every parish in the western part of the Commonwealth? Every person was born with the obligation of supporting religious instruction of a certain kind, for the dissemination of doctrines which many did not believe. He had the happiness to belong to an Unitarian society, where he could worship in a manner consistent with his views of the doctrines of Christianity. But what would be the condition of a man belonging to such a society, who, by what he conceives to be the operation of irresistible grace, is brought to believe in the trinity, and all the doctrines connected with it, and that his former opinions were erroneous? Shall he be bound to adhere to his society, or to contribute to the support of a teacher who according to his new views preaches what is without a particle of religion in it, and inculcates doctrines abhorrent to his conscience? It is only an act of justice to permit him to withdraw. As to its violating the obligation of contracts between the parish and the minister, it is done by the provision of the constitution already, and there is no mode of preventing it. If all are required to pay for the support of public worship in some society, it is all that can be done towards gaining the purposes of government. The differences between persons of the same denomination are many of them more essential than those which distinguish the different denominations. The latter are principally matter of form—the other may be a difference in fundamental doctrines. The learned gentleman proceeded to state the practice that was begun as early as 1807 by the Legislature, of incorporating poll parishes, and the operation and effect of the practice which he contended had been favorable in promoting attendance on public worship and the growth of piety and religion.

Mr. FAY of Cambridge said, if the proposition had been substantially discussed and acted on, he should not have brought it forward at this time. But it was brought forward in connection with other principles, and had not been fairly tried. He did not believe it would be productive of the evils which the gentlemen from Concord and Littleton, who had spoken on the subject, apprehended. The evils which they had described were the evils of the constitution, and some of them would be done away by this measure. The gen-



tleman from Littleton surrendered the argument when he contended that all which was provided by this amendment was attained by the law of 1811, which law he admitted to be right. He believed that the injurious effects of the alteration would be confined to a few cases, and that in general the only effect would be to introduce a little interchange between parishes, which would be of favorable tendency.

Mr. FOSTER did not believe that gentlemen who differ in speculative opinions often differ so much that they cannot worship together profitably. But this amendment permits persons without cause—without pleasing to offer any reason, to go to another society, and to desert that in which they are bound to perform certain engagements. He did not object to persons separating, who could not profitably worship together. This amendment would virtually dissolve every contract existing between a parish and its minister. He knew there was a remedy in the courts of the United States, but no one would wish to resort to it.

Mr. ABBOT of Westford moved to amend the resolution, by annexing a proviso that the real estate of non-residents shall be liable to be taxed for the support of public worship in the town or parish in which it is situated.

Mr. HOAR supported the amendment. He explained the operation of the resolution if adopted in releasing from taxation, for this object, all the lands of non-resident proprietors.

Mr. STORY asked the gentleman if he should vote for the resolution if the amendment were adopted.

Mr. HOAR said he certainly should not vote for the resolution if amended, but he thought it his duty to endeavor to make it as little injurious as possible.

The amendment was negatived—127 to 173.

Mr. BALDWIN expressed his entire concurrence in the resolution. He said there were differences of opinion as great between persons of the Congregational denomination, as between Congregationalists and Baptists. It was said that a minister might be left by his people. This was true—but there ought to be no obligation that was not mutual. The minister might change his opinion, and the people would be deprived of the benefit of their contract. Were the people in such case bound to support him? A person cannot worship with any profit with a teacher from whom he differs in the essential points of faith.

The question on the resolution was then taken, and it was agreed to—214 to 116.

The committee then rose and reported its agreement to the resolution.

It was ordered that when the House adjourn, it be to half past 3 o'clock this afternoon.

Leave of absence was granted to Messrs. DEWEY and KELLOGG of Sheffield, GATES of Rutland, and WHITTAKER of Monson.

Adjourned.

## AFTERNOON SESSION.

The House met at half past 3 o'clock.

Leave of absence was given to Messrs. EAMES of Washington; KNIGHT of Norwich, and DOANE of Phillipston; also, to Mr. JONES of Barre, after to-morrow.

On motion of Mr. WALTER of Boston the House went into committee of the whole on the unfinished business of the forenoon—119 to 94—Mr. WEBSTER in the chair.

The committee proceeded to the consideration of the resolution offered by Mr. BALDWIN of Boston for providing that any person becoming a member of any religious society, and filing with the clerk of the town where he dwells, a certificate of a committee of such society, of his membership, shall be exempted from taxation to any other society, while such membership continues.

Mr. BALDWIN said that some amendments to the third article of the declaration of rights, had been agreed upon by the Convention, but the most obnoxious part, perhaps, remained unrepealed. The most potent objection which had been urged against incorporating this resolution into the constitution, was, that the provision was liable to abuses. Particular instances had been mentioned, which, upon examination of the facts, would be found to have been misrepresented. He was sorry that such representations should be given, because they prejudice the minds of gentlemen, unjustly, against the merits of the resolution. The principle of the resolution was contained in the fourth resolution of the select committee on the declaration of rights. The whole thing claimed was, that the money of the members of a society of any denomination, should not be paid, so as to oblige them to draw it out of other hands. It was as contrary to the tenets of the Baptists, to levy compulsory taxes, as it was to those of the Friends to do military duty. The gentleman from Littleton had said, that seventy societies applied to the Legislature some years since, to be incorporated, only one of which was a Congregational society. The gentleman mistook the object of these applications. It was to get rid of paying taxes to other societies; not to obtain authority to tax their own members. He pitied that clergyman who depended on the compulsory taxation of his society to ensure him a subsistence. The exemption in this resolution lasted only so long as the person continued a member of the religious society to which he united himself.

Mr. WILDE of Newburyport said that although the time of the Convention was short, he could not reconcile it to his conscience not to resist a proposition so totally opposed to his feelings and principles, as well as repugnant to what had already been adopted by the House. If the alternative were put to him to adopt this resolution or expunge the third article, he should prefer expunging the third article; and for this reason, that the whole subject would then be in the power of the Legislature. Although this would be a dangerous power to be left to the Legislature, yet he should trust to the feelings and dispositions of the people of this Commonwealth to rec-

tify any mistakes or abuses. Though many evils might arise, though the rights of conscience might be invaded by the Legislature, he would run the risk rather than accept this proposition. What was the amount of this resolution? that any man may join any society, and on producing his certificate of having joined it, may be exempted from taxation for the support of public worship in every other society. Any man may join any society, or any number of men may form a society, by which any man may be exempted from all taxation for the support of public worship in the town where he resides. The consequence will be that all who want to get rid of paying taxes will join a society. It is not necessary to support public worship—there is no need of a public teacher—the society may be in this town or in any other. A religious exemption society will be formed—exempt not only from taxation, but from all religious duties. A society may consist of one hundred thousand persons from all parts of the Commonwealth, and all the members residing in their respective towns. If this was not totally expunging the third article, it was worse; because by putting this resolution into the constitution, the Legislature would be deprived of the power to correct such abuses. He would make a single remark upon the manner in which this resolution was introduced. The substance of it was contained in the proposition introduced by the gentleman from Beverly, (Mr. WILLIAMS.) The gentleman from Boston, (Mr. PARKER,) to correct the evils which that proposition might occasion, moved an amendment by which all persons should be called upon to contribute to the support of public worship. The gentleman from Beverly acceded to this. He said he had no design to break up parishes, but wished that every society might be at liberty to raise moneys in their own way, without being subjected to the inconvenient mode of withdrawing from other hands the taxes paid by its own members. The proposition of that gentleman thus modified, Mr. W. conceived at the time, would be a valuable amendment to the third article, and he still thought so. It would have remedied a defect in that article. It would have put a restraining clause upon the Legislature in regard to exempting from contribution to the support of public worship. The court were constrained to say, as there was no clause for restricting the Legislature, that the law of 1811 was constitutional. He believed that proposition as amended would have been a salutary check upon the Legislature. That it would have produced harmony; and that time and experience would have removed all our fears and apprehensions of its operation. But it was in vain to speak of that now, or to attempt to restore it. He knew it was opposed by gentlemen who had nothing in view but the support of the institution of public worship and religious instruction, but he thought if they would review the subject fairly, that instead of a majority of six or seven against the proposition, two thirds of the House would be in favor of it. The gentleman from Boston, (Mr. BALDWIN) however, has not thought proper to move that proposition, but prefers moving the

present resolution with all its defects. After a majority of 110 have determined to retain the third article, they are called upon by the minority to yield the principles of it for the sake of conciliation. He did not know how the minority could call on them to yield these principles any more than they could call on them to abjure their religion. He had not praised the law of 1811; he only said it was made with a good intent. It was made prospectively. The abuses were not foreseen. If the abuses of which it is susceptible should take place, the Legislature would correct them; but if this law is inserted in the constitution, it will be out of their power. They would have to sit under a church founded for the purpose of exempting from taxation. It was not the intention of the gentlemen who have brought forward any of these propositions, to exempt profligates from contributing to the support of religion and morality; they had disclaimed it; but such would be the effect of the present resolution. This proposition did not show conciliation; brought forward too at this late period of the session. In every instance, those in favor of the third article had made concession. He had yielded in every vote. He wished every religious person to enjoy freedom in religious worship, and they had as much without this amendment to the constitution as they would have with it; but he did not want to help those who wished not to contribute at all to the support of religion. He had already shown that he was not bigoted; he had no disposition to crowd any gentleman, but would yield as far as any man on a question of expediency; but on a question of principle, he would not yield, whatever might be the consequences. He hoped the resolution would be negatived without much consideration.

Mr. VARNUM said the gentleman from Newburyport had expatiated largely on the impropriety and, he might say, wickedness of introducing such a proposition at this time. He asked, was this correct? Does any body figure to himself that any society of 100,000 persons, such as the gentleman has imagined, will ever be realized? Mr. V. read the third resolution of the committee on the declaration of rights, which had been adopted. In this third resolution the societies incorporated and unincorporated, are required to do what? to make suitable provision for the institution of public worship of God, &c. Here they had not only bound these societies to make suitable provision for the support of public worship but had also bound the Legislature to see that such a provision is made. How then could such a society as the gentleman has imagined, exist?

Mr. WILDE explained. His argument was that 100,000 or any number might join one society and have public worship kept up in any one place in the State, and the members not attend it.

Mr. VARNUM said it was not wonderful that he should not understand, he was so far behind the gentleman in learning. He said there would be no society that would not be fully under the operation of law and bound to support public worship. So ought every one to be. If we looked a little further, we should find that the

difficulty was not in the country towns but in the large seaports, where there are many persons who are never called on to contribute to the support of public worship; men of large property who do not pay a cent. Gentlemen had told them, and gentlemen in high stations, who, from the nature of their offices, were capable of judging from the experience of its results, that the law of 1811 had not operated in the manner they had anticipated. It was well known that it had produced harmony and allayed the great public excitement which prevailed at the time when it was passed. He thought that could not be stigmatized as a bad proposition, the intention of which was to introduce into the constitution a law which has operated so favorably. One denomination had been provided for this morning by the adoption of the resolution introduced by the gentleman from Cambridge, (Mr. FAY.) The dissenters only contended to be put on the same footing. Why should one denomination be obliged to let the moneys intended for the support of their own mode of worship, pass through the hands of another denomination? He hoped the resolution would be adopted.

Mr. SIBLEY of Sutton hoped the resolution would prevail. As experience was the best master, he would mention that it was twenty-five years since they had had any parish tax for the support of public worship. While taxes were assessed, the society continually diminished till it had almost come to nothing; but they adopted the method of taxing pews, and now the society flourished. No person was compelled to attend public worship or contribute to its support, but every person who had any claims to respectability contributed voluntarily. He did not like to hear so much said about the superior goodness of the seaports compared with the country towns. He was a Congregationalist, but he was in favor of the present resolution.

Mr. DUTTON said he should make no apology for the few moments he intended to occupy, upon these resolutions. He was opposed on Saturday, to sending them to the committee, and he did not know upon what principle of equity or even courtesy, the indulgence had been granted; for he had supposed that the minority were as much bound by rules as the majority. The majority of the Convention, however, after one refusal, had yielded, and the resolutions were now to be disposed of; and he should consider it an abandonment of his duty, if he discovered less perseverance in maintaining the principles of the majority, with whom he had acted, than the gentleman did who assailed them. This was the fourth attempt that had been made to do away the force and effect of the great principle in the bill of rights. This principle, a large majority had determined to maintain; and they were now called upon, again, to surrender it in the spirit of conciliation. Many moving appeals had been made to the candor and liberality of the majority; but he would ask gentlemen to consider what was the true meaning of this language. In his apprehension it was nothing short of this—give us all we ask and we shall be satisfied—yield the principle which

you have sustained in every form, and which you deem vital to the best welfare of the State, and we shall be content ; surrender, at this last trial, all that you have resolved to hold, and we shall give up the contest. Let it be remembered that the majority have acted on the defensive ; that they have been compelled to defend their principles, assailed as they have been in every form that ingenuity could suggest, and with a perseverance which he should think praiseworthy if he thought the object so. But upon this subject, it was in vain to attempt to disguise or conceal the truth. There was an irreconcilable difference of opinion ; and whenever the reverend gentleman and his friends were satisfied, he was sure *he* should not be. The conciliation so much recommended, demanded everything and gave nothing ; and before he could become a party to it, he must know upon what terms it was to be had. The gentleman who introduced these resolutions has frankly avowed his opinion that religion ought not to be supported except by voluntary contribution ; the majority have determined, after a long and repeated discussion, that it is not only the unquestioned right of the State, but its solemn duty to compel men by law to maintain the public worship of God in all cases where it is not done voluntarily. Upon this subject there can be no compromise, no conciliation. The reverend gentleman had urged, that because a man was obliged to pay his taxes where he lived, though he might carry them where he attended public worship, it made one denomination of Christians subordinate to another. If this was ever true, the resolution passed this morning placed Congregationalists on the same footing ; but in truth it never came within the meaning of the clause referred to in the constitution. The amendment which has passed recognizes the existence of unincorporated societies. He had voted for this, but he could go no farther. They now stood on the same ground with incorporated societies, were subject to the same duties, and equally under the control of the Legislature. But these resolutions now propose to engraft into the constitution the second section of the law of 1811. He was wholly opposed to this, not because he was opposed to the law, but because he was opposed to making it a part of the constitution. The whole difference, in his opinion, lay between having these provisions in a law, and having them in a constitution. So long as they remained a law, they were subject to revision and modification. Abuses might hereafter exist, which would require to be corrected. The law had been in operation only ten years ; a much longer time was necessary to ascertain its bearing and influence. He did not know that any great abuses now existed, but he was not wise enough to foresee that none would exist fifty years hence, nor foolish enough to say that the Legislature should not have the power to correct them when they did exist. It was not wise to attempt to bind by an unchanging law, the ever changing interests and opinions of men ; fix forever in one place that which is in its nature mutable and progressive. Laws can always be accommodated to the existing state of things. As property accumulates,

as the labors and occupations of men are more divided and subdivided ; as new rights and interests spring up, as opinions and sentiments change, the law keeps pace with them all. It is, and always ought to be, the index which marks the progress and the changes of society. On the other hand, the constitution is and always ought to be a body of general rules. The great outlines only are drawn, the filling up ought to be left to the sound discretion of the Legislature. General powers are granted, and general duties are enjoined ; but the incidental powers and means are to be developed and applied by the Legislature, according to the exigencies of the times. It often happens that a law does not accomplish the good or prevent the mischief it intended ; and the statute books are full of acts in alteration or amendments of acts. The inference from this is, that the foresight and the judgment of men are fallible ; and that all such details should be within the control of the Legislature. He had opposed the introduction of all details and minute provisions, into the constitution, as well upon other subjects as this ; and as the present resolutions were merely the details of an existing law, he was, for the reasons he had given, opposed to them. In addition to the arguments urged against the resolutions by the gentleman from Newburyport, which he thought conclusive, he would remark, that if the reverend gentleman's object was to secure the right of maintaining public worship by voluntary contribution, he had it now by the constitution. It was only those who refused to support it at all, in any way, that the law would compel to do their duty ; and why should not the law compel the performance of this highest duty, as well as of any other. It is admitted to be a duty, in the discharge of which the State is interested, and if the State does its duty, this will always be exacted. If, then, the resolutions had no other object than to provide for the support of public worship by voluntary contribution, they were needless ; if they had other objects, he was opposed to them, because he did not know precisely what those objects were, nor what would be the effect of such provisions. When he understood the avowed opinions of the gentlemen who supported these resolutions, and their perseverance in them, his fears were awakened ; and he would say of them, what Laocoon said to his countrymen, respecting a certain religious offering of the Greeks,

*" Quicquid id est, timeo Danaos et dona ferentes !"*

Mr. STORY opposed the proposition. It was his misfortune to be absent when this subject was before discussed, and he had taken no part in this question. It was proper to consider what was already done. The Convention had determined by a large majority that it was fit and proper that the Legislature should be invested with authority to require that towns, parishes and religious societies shall make provision for the institution of the public worship of God, and the support of religious teachers in all cases where it is not done voluntarily—they had placed the rights and duties of unincorporated societies on the same footing with those that are incorpo-

rated—they had extended the right of withdrawing from a territorial parish so as to permit a person to go from one society to another of the same denomination and pay his taxes there. In adopting these indulgences they had given the greatest latitude consistent with the preservation of the general principle. So far he was not only willing, but anxious to go. But they must stop somewhere. The proposition now offered, if adopted in the constitution, would really and vitally destroy the main principle which had been established. They would establish the principle in form, but would provide the means by which its object might be completely and silently done away. They had made already such provision that the right of equality of denominations could not be sacrificed, but if they engrafted this proposition into the constitution, it would take away the power of the Legislature to compel the support of public worship in any part of the Commonwealth. Its tendency would be by taking the subject out of the sphere of legislation, to put it out of the reach of law. He had no objection to its remaining as a law, and there was no probability that it would be repealed unless it was abused. If it was in the constitution, the Legislature, the courts and juries would be bound by their oaths to sanction even the abuses that might be committed under it. Should it be repealed, the great principles of it are already adopted in the amendments agreed to—that unincorporated societies shall be put on the footing of those that are incorporated, and that every person shall be free to go to what society he pleases, and have his taxes paid to the support of religious instruction there.

Mr. LINCOLN of Worcester said that what the ultra liberals and the ultra royalists in religion had acquiesced in, seemed to be a point at which we ought to stop. If this proposition were made originally, before any other propositions had been accepted, it would have been entitled to a more favorable hearing; but the Convention had adopted a principle that was repugnant to it. He had forewarned certain gentlemen that they were yielding more than they intended; but they acted for themselves, and he acted consistently in holding them to their concessions. The Congregationalists were not contending for superior privileges, but while they were willing on the one hand to extend to other denominations an equality of rights and immunities, they were not willing on the other to be bound in fetters, as they would be by this resolution. For what was the third resolution of the committee on the declaration of rights which had been adopted by the Convention? That resolution makes it imperative on the Legislature to compel Congregational societies to support public worship. While by this the gentlemen compel Congregationalists to support public worship, why should they call upon Congregationalists to free them from any compulsion? If the third resolution was a part of their proceedings which it was too late to alter, it was improper to call upon Congregationalists alone to support public teachers. All he contended for was equal rights. He stood there as a Congregationalist to resist



being put under subordination. But if the proposition of the gentleman from Boston should be adopted, there would be subordination. And of whom? Of the Congregationalists; if you compel them to pay for the support of religion and exonerate every other denomination of Christians. Let the gentleman from Boston, he said, consider that by the third resolution it is provided that every society, incorporated or unincorporated, shall support public worship. And what was the resolution passed in the morning? That every citizen shall appropriate his contributions to whatever society he pleases. He asked if by these provisions all classes of Christians were not on the same footing. If then you provide that a Congregationalist shall support religion and compel him to support a teacher of his denomination, it was altogether unequal to pass this resolution for giving an exemption to others. In this way, he contended, gentlemen *did* make a subordination. He was willing to go as far in liberality as any man, but there was a point, where he must pause; and instead of putting all other denominations in subordination to Congregationalists, he could not consent to put Congregationalists in subordination to every other denomination.

The question was taken on Mr. BALDWIN's resolution and decided in the negative—74 to 218.

The resolution providing that any counsellor may be qualified in the recess of the Legislature, by the governor alone, or by the lieutenant governor and any counsellor who has been previously qualified, was read and agreed to.

The committee proceeded to the consideration of the resolution, proposing to have sheriffs elected by the respective counties, instead of being appointed by the governor and council.

Mr. LINCOLN of Worcester supported the resolution. He said he had received a letter from the mover, (Mr. VALENTINE) and he accorded in the views of that gentleman. The office of sheriff was a very important one. The appointment of deputies gives it great patronage, and it was the most lucrative office in the Commonwealth. The duties of it affected immediately the people. He understood from the gentleman who offered the resolution, that they should be chosen for not more than seven years nor less than five. It was found hitherto that they were the creatures of the governor. On a change of governor the people might be deprived of the sheriff, if he was acceptable to them, or they might not be able to get him removed, if he was not acceptable. This grew out of the circumstance, in our frame of government, that a governor might be elected, against the will of a majority in any one county.

Mr. FAY of Cambridge said he rose, because he saw no other gentleman disposed to answer the remarks of the gentleman from Worcester. He agreed that the office was a very important one, and that the people were very much interested in it; but it did not therefore follow that the sheriff should be elected by the people. The sheriff was an executive officer, and ought to be appointed by the governor. If he was chosen by the people, he would be making

favor for his next election. The governor would have only the good of the people in view.

Mr. PICKMAN of Salem said he agreed entirely with the gentleman who last spoke. The officers would be better selected by the governor and council than by the people. Until the unhappy year of 1808, the office was always considered as holden during good behavior. He hoped such times would not recur.

The question was taken on the resolution and decided in the negative—141 to 161.

The committee rose, and reported their disagreement to the resolutions of Messrs. BALDWIN and VALENTINE, and their agreement to the resolution respecting the qualifying of counsellors.

The Convention concurred with the committee of the whole in rejecting the resolution offered by Mr. BALDWIN. They also concurred in rejecting the resolution of Mr. VALENTINE, respecting sheriffs—179 to 82.

The resolution respecting the qualifying of counsellors, was read a first and second time and passed.

The resolution offered by Mr. FAY, for providing that all moneys paid by the subject for the support of public worship and of the public teachers of piety, religion and morality, shall, if he request it, be applied to the public teacher or teachers, if any, on whose instruction he attends, whether of the same or of a different sect or denomination from the society in which the moneys are raised, was read a first time and passed to a second reading—205 to 79.

The resolution being read a second time,

Mr. BARTLETT of Medford moved to amend by adding a provision that the taxes raised upon the real estate of non-resident proprietors shall be applied towards the support of public worship in the town, precinct or parish where the land is situated, unless the proprietor or proprietors shall be of a different sect or denomination of Christians from those by whom the said taxes are assessed. Mr. B. said the operation of the resolution was to put persons leaving their own society and joining another of the same denomination, on the same footing with those who join a society of a different denomination. He did not object to it, since it appeared to be the wish of members generally, that such a provision should be made; but he saw there would be a great door open for litigation. Christians of the same denomination would claim against each other; the Congregationalist against the Congregationalist. Gentlemen had complained of the difficulty and unkind feeling arising from their being obliged to draw out of the hands of the treasurers the moneys due to them. He proposed to put this little amount out of the way of dispute, only between those of the same denomination. The injury would be much greater from permitting it to be a subject of contention, than from leaving it to go to the support of public worship in the town where the land is situated. This provision will not affect the Congregational minister of the town where the taxes are raised, as he has a settled salary; but some ministers would otherwise have

an increase of their income from the taxes raised in towns where neither themselves nor, their parishioners resided. For the construction of the resolution will be, that a minister may call for such taxes, raised in a society of the same denomination with himself.

The question was taken on the amendment and decided in the negative.

The resolution then passed.

Mr. WEBSTER moved as a separate resolution the amendment which had been offered by Mr. BARTLETT. He said he could not resist the argument of justice. He wished to know why the men who lived in a town and raised the value of the land of non-residents, by expending money for the maintenance of moral and religious instructions, had not a right to call on the proprietors of the land to contribute. It was a plain and obvious dictate of common justice.

Mr. BLAKE said he perfectly agreed with the gentleman that the lands should be taxed, but he thought there was an insurmountable difficulty how to determine whether they belonged to a person of a different sect. An inquisitorial committee would be necessary for this purpose.

Mr. FLINT of Reading said that if the taxes of the lands in some towns belonging to non-residents, were withdrawn from the towns where the lands were situated, the burden of maintaining public worship would be intolerable.

Mr. TILLINGHAST said it was not in order to debate the resolution as it had not been through a committee of the whole.

Mr. SALTONSTALL moved that it be committed to a committee of the whole.

Mr. QUINCY spoke in favor of the commitment. He said that there were lands lying in different parts of the Commonwealth, owned by inhabitants of the single town of Boston, to the amount probably of two or three hundred thousand dollars in value, which, although belonging to non-residents, ought to be taxed to the support of the ministry, in the towns where those lands lie; and that a contrary principle would tend greatly to the injury of particular towns of the Commonwealth, by impairing their power to support religious worship.

Mr. LINCOLN of Worcester said he should think the adoption of this resolution a violation of all that had been done. They had voted that all the moneys paid by the subject for the support of public worship should be appropriated, if he requested it, to the support of the public teacher, on whose instructions he attended. The present resolution would give an advantage to other sects over the Congregationalists. Some gentlemen in the country owned estates in Boston, and this resolution would operate unequally, because taxes for public worship are not assessed territorially in Boston. The proposition of the gentleman from Salem, similar to this, had been rejected by a majority of nearly 100 to 1. There was very little land of non-residents in the country. No good reason could

be given for going into committee of the whole upon this resolution at this late hour of the session.

Mr. FLINT said the gentleman was not aware how much the towns near the seaboard would be affected by this resolution. It would not operate so extensively on property fifty miles back.

Mr. RICHARDS of Plainfield said that in the town in which he lived, there were six hundred acres of land belonging to one man who lived now in the city of New York. It seemed to him very unreasonable that all the taxes on this land should be carried out of the town. The intrinsic value of the land was increased by the diffusion of religious and moral instruction among the inhabitants of the town. He hoped the House would go into committee of the whole.

Mr. WEBSTER said that if they made changes in the third article, giving liberty to persons to leave their own societies and join others of the same denomination, they ought to make modifications in respect to taxes, in order to conform to those changes. He had no houses in town, nor farms in the country; he contended for the principle. Every man is bound to pay for the moral principle which is raised in the community by public worship and religious instructions. He asked if it was not a demonstrable truth, that the value of property was increased by the cultivation of religion and good morals among the people where it was situated. Take the case of property owned by persons out of the State, as mentioned by the gentleman from Plainfield. Have we not a right to tax it when we are raising its value? As to the late hour at which this proposition is brought forward, he said they had already adopted a modification of the third article at a late hour—a modification for which he had voted, though reluctantly; reluctantly, because it was in opposition to the sentiments of gentlemen whose characters and opinions he respected.

Mr. J. PHILLIPS of Boston said he was a stranger till this half hour to the nature of the present question, but if it was a fact that the inhabitants of the town of Boston could withdraw all the taxes raised upon the lands owned by them in the neighboring towns for the support of public worship, he hoped the House would go into committee of the whole on this resolution.

The question was taken for commitment and determined in the affirmative—188 to 121.

A motion was made that the House should go into committee of the whole to-morrow at 9 o'clock. Negatived. The House then resolved itself into committee of the whole, Mr. DANA in the chair.

The resolution being read, Mr. THORNDIKE moved to strike out that part of it which excepts the estate of persons of other denominations.

Mr. WILDE had himself no objection to striking out the exception, but thought it would embarrass the question and might endanger the whole resolution. He thought it would be a preferable course if the gentleman would withdraw his motion and call for a division of the question.

The CHAIRMAN thought the resolution was not susceptible of division.

Mr. WEBSTER said the object could be effected in another mode. For the purpose of trying the sense of the House, first on the general proposition without the exception, he moved to amend by striking out the whole resolution and inserting the proposition of Mr. ABNORTT, that all real estate of non-residents shall be liable to taxation for the support of public worship in the towns or parishes in which it is situated. He said it was well known there were extensive and valuable tracts of land belonging to corporations, and to persons out of the State, and to other states. There were lands in the county of Berkshire worth more than a hundred thousand dollars, belonging to the State of Connecticut. It would be difficult to say of what denomination this State is.

Mr. LINCOLN moved to amend the resolution in such manner that the non-resident proprietor shall have power to direct the appropriation of the tax to the support of his religious teacher.

Mr. L. said it was more congenial to his own feelings that religion should be supported by a tax than in any other mode. He had felt constrained to advocate a contrary doctrine rather in deference to the feelings of those he represented than in conformity with his own opinions. If the estate of non-residents was to be taxed for this object, it ought to be in the power of the owner to have the tax applied towards the support of the religious teacher whom he approved.

Mr. THORNDIKE opposed the amendment. It was for the advantage of every estate that religious worship and moral and religious instruction should be maintained in the town where it was situated. It might be presumed that in the aggregate one religious society would be as much benefited by it as another.

Mr. WEBSTER said that the amendment would do away the whole object of the resolution, and would be opposed to the principle on which it was founded. If there was anything sound in the principle on which the whole of the third article was founded, it was that the maintenance of religious worship and instruction tended to improve the state of society, and to give an additional value to everything in the place where it was supported. The gentleman from Worcester had told us that his votes here had been rather in deference to the opinions of others, than in obedience to his own opinion. He wished the gentleman would inform the House when he gave his own opinions, and when those of his constituents, that they might be able to judge what degree of weight they were entitled to.

Mr. LINCOLN said that he represented the views of his constituents, and this was all he should say in reply to the remark of the gentleman who last spoke. The other gentleman from Boston, (Mr. THORNDIKE,) did not understand his argument. It was that a minister may be entirely supported by taxes on lands of non-resident proprietors of a different denomination from himself. The resolution would operate unequally. Those born in a parish incorporated a

hundred years ago, would be privileged over one newly erected, in the same town.

Mr. BALDWIN asked if this resolution could be adopted without undoing what had been done in giving a person power to carry all his taxes with him to the teacher on whom he attended.

Mr. WEBSTER said it was not repugnant to the resolution which had been adopted, but was a qualification; an exception to the general principle. If the gentleman from Worcester wished to have the ministerial taxes paid to some person in the town according to the desire of the owner of the land, he had no objection. All he contended for, was, that they should not be drawn from the town.

Mr. BLAKE said he saw no repugnance between the present resolution and the one which had been adopted. The case of non-resident proprietors had not been provided for. He saw no reason why a tax for a highway or for a school should not be drawn away from the town where it is raised, just as well as a tax for the support of public worship.

The amendment proposed by Mr. LINCOLN, was negatived.

The question recurring on Mr. WEBSTER's amendment,

Mr. VARNUM said it was improper to introduce new propositions at this late period of the session, when many of the members had gone home. This amendment would do away the effect of a resolution which had been adopted. Gentlemen were going to compel societies to support public worship, but were depriving them of the means. They were requiring the full tale of brick, but were taking away the straw. If the gentleman wanted to pay his own contributions to the support of his Congregational friends, he had no objection; but to break in and say that the taxes of all denominations shall be paid to one particular denomination—it was a most monstrous violation of everything that has been done.

Mr. HOAR could not perceive the consistency of the gentleman from Dracut. In the morning he was advocating the resolution that authorizes any person to go from the parish in which he resides to any other society and to withdraw his ministerial taxes. He now complains that we are requiring of all religious societies the full tale of brick and taking from them their means by this resolution. It is the reverse. We are requiring parishes to support public worship, and we wish by this resolution to preserve to them the means of doing it. We have done, with the gentleman's approbation, precisely what he complains of, unless this resolution is adopted. Mr. H. contended that this tax ought to be placed on the footing of every other tax on real estate. It was but an act of justice to the parishes where the estate was situated. No other tax was so taken away. The proprietor of a distant estate was not allowed to withdraw the highway tax for repairing the highway before his own door, nor the school tax for the particular education of his own children. The amendment was of greater importance than some gentlemen might imagine. Large portions of many towns were owned by persons at a distance. The quantity of land in the Commonwealth owned by

the state of Connecticut he believed was greater than had been stated.

Mr. HYDE of Lenox moved that the resolution be so amended that the money raised by taxes on non-resident lands be equally divided between all the religious societies in the town, in proportion to the valuation of the respective societies.

Mr. NICHOLS was in favor of the amendment. The resolution at present gave to the non-resident proprietor the right to select the society to which the tax on his estate should be paid. When the minister was unpopular, very few persons would be left in the society, and they would have the power of assessing the tax on non-residents.

The motion was negatived.

Mr. TILLINGHAST moved to amend the resolution so as to confine the right of taxing to lands, the proprietors of which lived out of the Commonwealth.

The motion was negatived.

Mr. LINCOLN of Worcester thought the whole operation of the resolution was not understood. It was a virtual repeal of the provisions of the law of 1811. The supreme judicial court has decided that the member of a Baptist society who owns lands that are taxed for the support of public worship in a town where he does not reside, may withdraw the tax for the support of his own religious teacher. Such an innovation would secure the rejection of the whole article. Those who belong to the society of Friends have been exempt from all taxation for the support of religion for forty years. The resolution if agreed to, would arm every dissenter from the Congregational order against the amendments, and would certainly be the means of defeating them.

The question was taken and the resolution agreed to—160 to 141.

The committee rose, and reported the resolution as amended.

To-morrow at half past 9 o'clock was assigned for the first reading of the resolution.

At 8 o'clock the Convention adjourned.

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#### TUESDAY, JANUARY 9.

The House was called to order at a quarter before 10 o'clock, and attended prayers offered by Rev. Mr. Jenks. The journal having been read,

Leave of absence was granted to Messrs. CHAPIN of Springfield, and MASON and WATERMAN of Adams. The report of the committee on leave of absence, on several other applications, being under consideration,

Mr. MARTIN said the Convention had been told over and over again that if members of the house of representatives were paid out of the public chest, how contented they would stay here and take care of the public business. He thought that gentlemen that had used these

arguments ought to stay here until the business of the Convention was finished.

Mr. STORY wished that gentlemen interested in the subject before the House would give way for a moment in favor of a proposition which, if acted on at all, must be very soon. The resolution adopted last evening in committee of the whole had produced a considerable excitement. He did not know what might be the opinion of the House with respect to finally passing it, in the state in which it was, but he hoped it might be so modified as to make it more generally acceptable.

The report on applications for leave of absence was laid on the table.

Mr. STORY moved that the resolution offered by Mr. BARTLETT, and agreed to in committee of the whole, be committed to a select committee.

Mr. PICKMAN said that he had been in favor of the resolution, but when he saw the small majority by which it was adopted in committee of the whole, and when he considered how thin the House was compared with what it had been, he felt unwilling to push it through the House. He therefore moved that the subject be indefinitely postponed. The gentleman from Boston, who supported the resolution, (Mr. WEBSTER) had told them that he had neither houses nor lands in town or country that would be affected by the amendment; but he possessed what was infinitely more valuable, talents of the highest order, which if he would condescend to apply to the acquisition of property, would enable him to possess houses and lands both in town and country. It might be supposed that he, Mr. P., was the owner of non-resident lands—but he did not own a particle of real estate that would be in the least affected by this resolution. But he thought it was their duty to abandon the measure, in the present state of the House, when they saw how small a majority of the members were in favor of it.

Mr. HAZARD of Hancock hoped the resolution would be postponed. It contained a new principle, and many of the members had gone home under the expectation that nothing of the kind would be done. In the town which he represented, many Quakers and Shakers lived, who, it was well known, supported christianity in their own way, and they owned lands in other towns which by this amendment would be made subject to taxation.

Mr. WEBSTER was sorry that the mover of the postponement, who had been one of the supporters of the resolution, had now abandoned it. It was unpleasant to be deserted by one's own friends. The gentleman says it passed by too small a majority, and for that reason it ought to be abandoned. This was a reason for desisting from a just and proper measure, which he (Mr. W.) had not applied to propositions of his own. He had brought forward a measure which, after four days' debate, passed by a majority of seven. He says it is brought forward too late in the session. It was not introduced later than the original proposition, to which this is an accessory. They



were cotemporaneous. He, (Mr. W.) had not heard a shadow of an argument against the principle of the resolution. Modifications had been suggested which might be proper; he was therefore in favor of the motion to commit. But before the proposition was rejected, he wished to see it met with an argument on its principle—to see its injustice. He hoped the motion for postponement would not prevail. Gentlemen had concurred in passing the principal measure late in the session, but it was too late to make the necessary modifications of it. If modifications and qualifications were not made, the amendments would be opposed and rejected by the people. He hoped the modifications which had been already agreed to by a majority of twenty—three times that by which the resolution directing the mode of choosing the council was passed—would be suffered to pass.

Mr. CUMMINGS was in favor of the postponement. He said the law had been misunderstood. The lands of persons not resident in the State are now taxable—lands of corporations are taxable where the lands happen to lie—and for lands belonging to non-resident individuals, the tenants are liable to be taxed. It had been said there were lands of a large amount in the country not tenanted. This was not the fact. Almost all the farms not in the towns where their owners reside, are leased. In the county of Essex he did not know of a single estate which was not tenanted and liable to be taxed.

Mr. BLAKE hoped the subject would not be postponed. He did not think there was much weight in the arguments against alterations of the constitution founded on the present provisions of the law. He contended that this amendment was rendered necessary by the alterations which had already been made; that the late period of the session ought not to be urged as a reason for rejecting it; and that what had been done would be entirely unacceptable to the people, unless this resolution was adopted. He hoped it would not be postponed, but that the motion to commit would prevail.

Mr. SALTONSTALL thought his friend and colleague last speaking could not be aware of the adoption of the resolution of the gentleman from Cambridge, authorizing any person to apply all the moneys paid by him for the support of public worship, to the teacher on whose instruction he attends, whether of the same or of a different denomination from that of the parish in which the money is raised. This will make a great change in our religious establishments, Mr. S. said, and he feared the consequences under any qualification. It may, in effect, reduce all our territorial parishes to poll parishes. Of what avail will be the right to tax the property within certain limits, when at the same time we authorize the owners to withdraw the taxes, and apply them as they please, some to one minister, some to another, even of the same denomination? He feared the effect on the permanency and validity of ministerial contracts. How much will a settlement contract be worth to a minister, when the next year his whole parish may slide from under him? There is danger, also, that aged ministers may be deserted,

should a popular young man be settled near. Many gentlemen, he said, differed from him, and he hoped his fears were groundless ; but some modification is necessary. By this resolution, non-resident taxes, as well as others, may be withdrawn, if the proprietor requests it. Heretofore, these have been applied to the support of public worship in the parish where the land is situated, unless the owner is of a different denomination. This is essential to the existence of many parishes, and ought to be continued. The vote of last evening goes farther, and authorizes the appropriation of all taxes on non-resident lands, whether the owner be of the same or of a different denomination. This is right in principle, and no one has yet met it in argument. Why should they not be taxed for this, as well as for schools or any other purpose, which tends directly or indirectly to enhance the value of the property ? It is not for the benefit of any particular denomination, but of the town or parish of whatever denomination ; for the constitution knows no distinction, has no preference. This, however, had not been practised ; and Mr. S. said he only wished to preserve the constitution and law as it had been in this respect, and he hoped the subject would be recommitted, at the motion of his friend, for the purpose of being modified.

Mr. HOAR said he believed the reason why the proposition giving every person liberty to separate himself from the parish in which he resides, and to withdraw his taxes, passed yesterday, was because it was of such immense magnitude that it was not comprehended. Its operation in destroying the parishes of the Commonwealth he thought was not seen in its true light. He would name an instance of its operation, as it respected taxes on real estate. Two-thirds of the real estate in the town of Brookline, he was informed, was owned by persons who reside in Boston, and are taxed there. If they go to Brookline in summer, it is in May or June, and they are not taxable there. He did not believe, from the well known liberality of the gentlemen so situated that they would withdraw their support from the reverend clergyman there ; but it would depend on persons in Boston, and not on the people of Brookline, whether he should continue to have a support. The effect of the alteration would be of immense extent. If the gentleman who moved the postponement had lived in the country, and had seen, as he had, the operation of causes much more trifling than this, in breaking up parishes, he would not countenance the inconsistency of taking up and forcing through a proposition of this magnitude in one day, and refusing to consider the modifications proposed for averting a part of its evils.

Mr. BOYLSTON said that he now resided in the town of Princeton ; but if he should choose to fix his residence at Roxbury, where he had sometimes resided, by the resolution adopted yesterday, he would be entitled to withdraw his ministerial taxes from the first named town. They paid a salary to the minister there of six hundred dollars, and a fifth part of the tax of the town was levied on

his estate. He thought his estate was benefited by the support of religious worship and instruction to the full amount of the tax imposed upon it; and he thought it would be unjust, and imposing an unreasonable burden on the people there, for him, in case of his not residing in the town, to withdraw the tax.

Mr. DANA considered this amendment as connected with that adopted yesterday. He had fears respecting them both. This was objectionable, in extending to lands of persons of all denominations. The Quakers would not pay the tax, but would let the lands be sold. He should have preferred to leave the third article as it was before the adoption of the resolution yesterday. But as that could not be done, he was in favor of committing this proposition, that it might be modified so as to remove his objections.

The question was taken, and the motion to postpone was lost—142 to 176.

The motion to commit was agreed to; and it was committed to Messrs. STORY, HYDE, BARTLETT, CHILDS, and WILDE.

It was ordered that the committee have leave to sit during the session of the House.

Mr. JACKSON, from the committee for reducing the amendments to form, moved that the resolution providing that the votes on the amendments returned to the Secretary's office shall be counted by a committee, and certified to the governor and to the Legislature, be amended by adding the following; "and all the amendments so ratified and adopted shall be promulgated and made known to the people in such manner as the General Court shall order."

Mr. JACKSON said it had been determined that the votes should be counted by a committee which was to meet a week before the session of the Legislature, and that they should certify the result to the General Court. The committee which had reported this resolution had thought it would be as well to let the General Court decide in what way the result should be proclaimed.

The amendment was agreed to.

Mr. JACKSON moved to amend the article relating to the change of the political year, by adding after the provision, that the governor, lieutenant governor, and counsellors, shall hold their offices for one year next following the first Wednesday of January, the words, "and until others are chosen and qualified in their stead."

The amendment was agreed to.

Mr. DAWES called the attention of the House to that part of the resolution directing the manner in which the votes on the amendments are to be given by the people, in which the persons voting are to express their opinion, "by annexing to each number the word 'YES' or 'NO,' or any other words that may signify his approbation or disapprobation of the proposed amendment." He thought this latitude might lead to difficulty. It would permit a man to read a whole sermon—they had had whole sermons read in the assembly—they might read them in town meeting and put them on file, to express their dissent or assent.

Mr. QUINCY said his colleague had expressed a part of his objec-

tion to the resolution. But he objected to that part of it which authorizes any one to "give his vote on all the articles or any number of them together, at his election, without being required to vote separately and specifically upon each of them." He said it would prevent the people from giving distinct votes on each article. The votes would not be given or returned in an intelligent form. He said they were about to give the power of deciding on the returns to an irresponsible body; and if the mode of giving the votes was not made so plain that he who runs may read, they were giving the whole power over the constitution to this committee.

Mr. SHEPLEY of Fitchburg moved to strike out, "or any other words that may signify his approbation or disapprobation." Persons voting might use such words that it would be very difficult to know what their opinions may be.

Mr. JACKSON said the object in inserting the clause was that the individual who voted, or the selectmen who certified the votes, might not be tied down to a particular expression. If they should happen to say yea or nay, or use any other words which were of equivalent meaning, there was no reason why they should not be received.

Mr. SHEPLEY modified his motion so as to insert in the place of the words proposed to be struck out, the following, "or any other words of the same import."

The amendment was agreed to.

Mr. WEBSTER thought there might be a further provision which would be of use, especially in small towns. If power were given to take the sense of the inhabitants by hand-vote, or by dividing the House, it would enable them to act upon the amendments with greater facility, and more intelligently. He therefore moved to amend the resolution by inserting a proviso that any town may agree to take the number of votes, &c., &c., against any or all the articles by a hand-vote, dividing the meeting, or by yeas and nays if they shall see fit.

After some debate, in which Mr. WEBSTER briefly supported the amendment, and Messrs. MARTIN, QUINCY, FISHER, LINCOLN, LAWRENCE, DANA, and PICKMAN opposed it, the motion was negatived.

Mr. ABBOT moved to amend the resolution which directs that an attested copy of the articles of amendment shall be sent to the selectmen of every town and district, by inserting after "selectmen," the words, "and to the town or district clerk, or to the delegate or delegates."

Mr. NICHOLS said there were two objections to the motion; the first was that it was an unnecessary expense, and the other that it would give an undue influence to the persons receiving them.

The amendment was agreed to.

Mr. ELLIS, from the committee on the pay roll, reported the roll with an additional day's attendance, amounting to 808 dollars, and making in all, including travel, the sum of 56,732 dollars. The roll was accepted, and an order passed, to request the governor and

council to issue a warrant for the payment from the treasury of the sums found on the roll.

The discussion was resumed on the resolution directing the mode of taking the sense of the people on the articles of amendment.

Mr. SULLIVAN of Boston moved to amend by striking out all that part which relates to voting by ballot, and inserting a provision that the vote may be taken on each article by hand or by dividing the house. Mr. S. said he thought the easiest and most intelligible mode of proceeding in the town meetings would be, when the inhabitants were assembled, to read and discuss the articles separately, and when each had been discussed the inhabitants would be called on to express their opinion by a vote on each article.

Mr. DANA hoped the amendment would not prevail, but that the voting would be required to be by ballot, and that forms of returns would be sent out to the selectmen of the several towns.

Mr. S. A. WELLS said it would be utterly impracticable in the town of Boston to proceed by a hand-vote, or by dividing. The voters could not all meet in any hall, and the number of votes for or against the articles could not be ascertained.

Mr. APTHORP said that by one of the resolutions it was required that the votes should be all given in, on one day. If all the articles were to be discussed and balloted on separately and the votes counted on each, it could not be all done in one day.

Mr. STURGIS said there was nothing to confine the meetings to one day; they might adjourn if they chose.

Mr. AUSTIN said the difficulty arose from endeavoring to force a conformity where it was impracticable. In this town it would be impossible to poll the house on the several questions. But in small towns that would be the most convenient mode. He moved the resolution should be so amended that the votes may be given by ballot or otherwise as the selectmen may direct.

Mr. SULLIVAN modified his amendment in such manner as to authorize the vote to be taken by ballot in cases where the selectmen shall so direct.

Mr. FREEMAN of Sandwich thought it ought to be left to the people in their primary assemblies to determine in what manner they would give their vote.

Mr. PRINCE of Boston moved to recommit the subject to the same committee.

Mr. VARNUM was in favor of the amendment. He said if the voters were to be influenced by any discussion on the articles, it would not be practicable to write their votes, after listening to a debate. They would not be furnished with pen and ink to write their votes, or fill up blanks if they were furnished with them. They would be compelled to furnish their votes beforehand, or to put in such as should be handed round to them.

Mr. STOWELL was in favor of the recommitment. They had had a long discussion, but had come no nearer to an agreement. They

had been engaged in a great work, not, to be sure, building a tower of Babel, but it was likely to lead to a confusion of languages.

Mr. BOND was in favor of recommitment, and proposed a modification which he thought would meet the objection.

Mr. MARTIN was opposed to recommitment. He said the people in the country understood pretty well their proceedings, and were now examining them. They were now discussing and making up their minds, and they would not need any discussion in town meeting.

The recommitment was agreed to.

The resolution directing that the returns shall be examined and certified by a committee of the Convention, was taken up for the purpose of determining the number of the committee and the mode of appointment.

It was moved that the number should be equal to the number of senators. Negatived.

Mr. LAWRENCE moved that the committee consist of two persons from each congressional district, together with the President of the Convention. Agreed to.

On motion of Mr. STORY, it was ordered that the committee be appointed in the usual manner by nomination from the chair.

Mr. STORY, from the select committee to whom was referred the resolution relative to the taxing the estate of non-residents, for the support of public worship, reported the resolution amended as follows:

*Resolved*, That the constitution be so amended, as to contain a provision that all taxes assessed for the support of public worship upon the estate of any non-resident proprietor or proprietors, shall be applied towards the support of public worship in the town, precinct, or parish, where such estate lies, unless such proprietor or proprietors shall be resident within the Commonwealth, and shall be of a different sect or denomination of Christians from that of the town, precinct, or parish, by whom such taxes are assessed.

Mr. S. said that the object of the resolution, as reported, was to reserve to persons of different denominations the same rights which they now have under the present constitution and laws, and to preserve to parishes the same right of taxing the estates of non-residents which they now have.

The resolution as amended passed to a second reading.

It was ordered that the second reading of the resolution be now had, and it was read a second time and passed by a large majority.

Mr. WEBSTER said that the rules of the House provided for the mode of proceeding, on the amendments proposed, until they came to the last stage, but for the form of passing the final act, no provision had been made. He therefore moved the following order:

*Ordered*, That the final question on the passing of the proposed amendments to the constitution, shall be taken in this form: "*Shall this article of amendment be proposed to the people of this Commonwealth for their ratification and adoption?*" And on this question the yeas and nays may be called as usual.

Mr. LAWRENCE expressed doubts of the propriety of taking the question in this form. He had considered it settled that when the

The CHAIRMAN thought the resolution was not susceptible of division.

Mr. WEBSTER said the object could be effected in another mode. For the purpose of trying the sense of the House, first on the general proposition without the exception, he moved to amend by striking out the whole resolution and inserting the proposition of Mr. ABBOTT, that all real estate of non-residents shall be liable to taxation for the support of public worship in the towns or parishes in which it is situated. He said it was well known there were extensive and valuable tracts of land belonging to corporations, and to persons out of the State, and to other states. There were lands in the county of Berkshire worth more than a hundred thousand dollars, belonging to the State of Connecticut. It would be difficult to say of what denomination this State is.

Mr. LINCOLN moved to amend the resolution in such manner that the non-resident proprietor shall have power to direct the appropriation of the tax to the support of his religious teacher.

Mr. L. said it was more congenial to his own feelings that religion should be supported by a tax than in any other mode. He had felt constrained to advocate a contrary doctrine rather in deference to the feelings of those he represented than in conformity with his own opinions. If the estate of non-residents was to be taxed for this object, it ought to be in the power of the owner to have the tax applied towards the support of the religious teacher whom he approved.

Mr. THORNDIKE opposed the amendment. It was for the advantage of every estate that religious worship and moral and religious instruction should be maintained in the town where it was situated. It might be presumed that in the aggregate one religious society would be as much benefited by it as another.

Mr. WEBSTER said that the amendment would do away the whole object of the resolution, and would be opposed to the principle on which it was founded. If there was anything sound in the principle on which the whole of the third article was founded, it was that the maintenance of religious worship and instruction tended to improve the state of society, and to give an additional value to everything in the place where it was supported. The gentleman from Worcester had told us that his votes here had been rather in deference to the opinions of others, than in obedience to his own opinion. He wished the gentleman would inform the House when he gave his own opinions, and when those of his constituents, that they might be able to judge what degree of weight they were entitled to.

Mr. LINCOLN said that he represented the views of his constituents, and this was all he should say in reply to the remark of the gentleman who last spoke. The other gentleman from Boston, (Mr. THORNDIKE,) did not understand his argument. It was that a minister may be entirely supported by taxes on lands of non-resident proprietors of a different denomination from himself. The resolution would operate unequally. Those born in a parish incorporated a

hundred years ago, would be privileged over one newly erected, in the same town.

Mr. BALDWIN asked if this resolution could be adopted without undoing what had been done in giving a person power to carry all his taxes with him to the teacher on whom he attended.

Mr. WEBSTER said it was not repugnant to the resolution which had been adopted, but was a qualification; an exception to the general principle. If the gentleman from Worcester wished to have the ministerial taxes paid to some person in the town according to the desire of the owner of the land, he had no objection. All he contended for, was, that they should not be drawn from the town.

Mr. BLAKE said he saw no repugnance between the present resolution and the one which had been adopted. The case of non-resident proprietors had not been provided for. He saw no reason why a tax for a highway or for a school should not be drawn away from the town where it is raised, just as well as a tax for the support of public worship.

The amendment proposed by Mr. LINCOLN, was negatived.

The question recurring on Mr. WEBSTER's amendment,

Mr. VARNUM said it was improper to introduce new propositions at this late period of the session, when many of the members had gone home. This amendment would do away the effect of a resolution which had been adopted. Gentlemen were going to compel societies to support public worship, but were depriving them of the means. They were requiring the full tale of brick, but were taking away the straw. If the gentleman wanted to pay his own contributions to the support of his Congregational friends, he had no objection; but to break in and say that the taxes of all denominations shall be paid to one particular denomination—it was a most monstrous violation of everything that has been done.

Mr. HOAR could not perceive the consistency of the gentleman from Dracut. In the morning he was advocating the resolution that authorizes any person to go from the parish in which he resides to any other society and to withdraw his ministerial taxes. He now complains that we are requiring of all religious societies the full tale of brick and taking from them their means by this resolution. It is the reverse. We are requiring parishes to support public worship, and we wish by this resolution to preserve to them the means of doing it. We have done, with the gentleman's approbation, precisely what he complains of, unless this resolution is adopted. Mr. H. contended that this tax ought to be placed on the footing of every other tax on real estate. It was but an act of justice to the parishes where the estate was situated. No other tax was so taken away. The proprietor of a distant estate was not allowed to withdraw the highway tax for repairing the highway before his own door, nor the school tax for the particular education of his own children. The amendment was of greater importance than some gentlemen might imagine. Large portions of many towns were owned by persons at a distance. The quantity of land in the Commonwealth owned by



the state of Connecticut he believed was greater than had been stated.

Mr. HYDE of Lenox moved that the resolution be so amended that the money raised by taxes on non-resident lands be equally divided between all the religious societies in the town, in proportion to the valuation of the respective societies.

Mr. NICHOLS was in favor of the amendment. The resolution at present gave to the non-resident proprietor the right to select the society to which the tax on his estate should be paid. When the minister was unpopular, very few persons would be left in the society, and they would have the power of assessing the tax on non-residents.

The motion was negatived.

Mr. TILLINGHAST moved to amend the resolution so as to confine the right of taxing to lands, the proprietors of which lived out of the Commonwealth.

The motion was negatived.

Mr. LINCOLN of Worcester thought the whole operation of the resolution was not understood. It was a virtual repeal of the provisions of the law of 1811. The supreme judicial court has decided that the member of a Baptist society who owns lands that are taxed for the support of public worship in a town where he does not reside, may withdraw the tax for the support of his own religious teacher. Such an innovation would secure the rejection of the whole article. Those who belong to the society of Friends have been exempt from all taxation for the support of religion for forty years. The resolution if agreed to, would arm every dissenter from the Congregational order against the amendments, and would certainly be the means of defeating them.

The question was taken and the resolution agreed to—160 to 141.

The committee rose, and reported the resolution as amended.

To-morrow at half past 9 o'clock was assigned for the first reading of the resolution.

At 8 o'clock the Convention adjourned.

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#### TUESDAY, JANUARY 9.

The House was called to order at a quarter before 10 o'clock, and attended prayers offered by Rev. Mr. Jenks. The journal having been read,

Leave of absence was granted to Messrs. CHAPIN of Springfield, and MASON and WATERMAN of Adams. The report of the committee on leave of absence, on several other applications, being under consideration,

Mr. MARTIN said the Convention had been told over and over again that if members of the house of representatives were paid out of the public chest, how contented they would stay here and take care of the public business. He thought that gentlemen that had used these

arguments ought to stay here until the business of the Convention was finished.

Mr. STORY wished that gentlemen interested in the subject before the House would give way for a moment in favor of a proposition which, if acted on at all, must be very soon. The resolution adopted last evening in committee of the whole had produced a considerable excitement. He did not know what might be the opinion of the House with respect to finally passing it, in the state in which it was, but he hoped it might be so modified as to make it more generally acceptable.

The report on applications for leave of absence was laid on the table.

Mr. STORY moved that the resolution offered by Mr. BARTLETT, and agreed to in committee of the whole, be committed to a select committee.

Mr. PICKMAN said that he had been in favor of the resolution, but when he saw the small majority by which it was adopted in committee of the whole, and when he considered how thin the House was compared with what it had been, he felt unwilling to push it through the House. He therefore moved that the subject be indefinitely postponed. The gentleman from Boston, who supported the resolution, (Mr. WEBSTER) had told them that he had neither houses nor lands in town or country that would be affected by the amendment; but he possessed what was infinitely more valuable, talents of the highest order, which if he would condescend to apply to the acquisition of property, would enable him to possess houses and lands both in town and country. It might be supposed that he, Mr. P., was the owner of non-resident lands—but he did not own a particle of real estate that would be in the least affected by this resolution. But he thought it was their duty to abandon the measure, in the present state of the House, when they saw how small a majority of the members were in favor of it.

Mr. HAZARD of Hancock hoped the resolution would be postponed. It contained a new principle, and many of the members had gone home under the expectation that nothing of the kind would be done. In the town which he represented, many Quakers and Shakers lived, who, it was well known, supported christianity in their own way, and they owned lands in other towns which by this amendment would be made subject to taxation.

Mr. WEBSTER was sorry that the mover of the postponement, who had been one of the supporters of the resolution, had now abandoned it. It was unpleasant to be deserted by one's own friends. The gentleman says it passed by too small a majority, and for that reason it ought to be abandoned. This was a reason for desisting from a just and proper measure, which he (Mr. W.) had not applied to propositions of his own. He had brought forward a measure which, after four days' debate, passed by a majority of seven. He says it is brought forward too late in the session. It was not introduced later than the original proposition, to which this is an accessory. They

were cotemporaneous. He, (Mr. W.) had not heard a shadow of an argument against the principle of the resolution. Modifications had been suggested which might be proper; he was therefore in favor of the motion to commit. But before the proposition was rejected, he wished to see it met with an argument on its principle—to see its injustice. He hoped the motion for postponement would not prevail. Gentlemen had concurred in passing the principal measure late in the session, but it was too late to make the necessary modifications of it. If modifications and qualifications were not made, the amendments would be opposed and rejected by the people. He hoped the modifications which had been already agreed to by a majority of twenty—three times that by which the resolution directing the mode of choosing the council was passed—would be suffered to pass.

Mr. CUMMINGS was in favor of the postponement. He said the law had been misunderstood. The lands of persons not resident in the State are now taxable—lands of corporations are taxable where the lands happen to lie—and for lands belonging to non-resident individuals, the tenants are liable to be taxed. It had been said there were lands of a large amount in the country not tenanted. This was not the fact. Almost all the farms not in the towns where their owners reside, are leased. In the county of Essex he did not know of a single estate which was not tenanted and liable to be taxed.

Mr. BLAKE hoped the subject would not be postponed. He did not think there was much weight in the arguments against alterations of the constitution founded on the present provisions of the law. He contended that this amendment was rendered necessary by the alterations which had already been made; that the late period of the session ought not to be urged as a reason for rejecting it; and that what had been done would be entirely unacceptable to the people, unless this resolution was adopted. He hoped it would not be postponed, but that the motion to commit would prevail.

Mr. SALTSTALL thought his friend and colleague last speaking could not be aware of the adoption of the resolution of the gentleman from Cambridge, authorizing any person to apply all the moneys paid by him for the support of public worship, to the teacher on whose instruction he attends, whether of the same or of a different denomination from that of the parish in which the money is raised. This will make a great change in our religious establishments, Mr. S. said, and he feared the consequences under any qualification. It may, in effect, reduce all our territorial parishes to poll parishes. Of what avail will be the right to tax the property within certain limits, when at the same time we authorize the owners to withdraw the taxes, and apply them as they please, some to one minister, some to another, even of the same denomination? He feared the effect on the permanency and validity of ministerial contracts. How much will a settlement contract be worth to a minister, when the next year his whole parish may slide from under him? There is danger, also, that aged ministers may be deserted,

should a popular young man be settled near. Many gentlemen, he said, differed from him, and he hoped his fears were groundless ; but some modification is necessary. By this resolution, non-resident taxes, as well as others, may be withdrawn, if the proprietor requests it. Heretofore, these have been applied to the support of public worship in the parish where the land is situated, unless the owner is of a different denomination. This is essential to the existence of many parishes, and ought to be continued. The vote of last evening goes farther, and authorizes the appropriation of all taxes on non-resident lands, whether the owner be of the same or of a different denomination. This is right in principle, and no one has yet met it in argument. Why should they not be taxed for this, as well as for schools or any other purpose, which tends directly or indirectly to enhance the value of the property ? It is not for the benefit of any particular denomination, but of the town or parish of whatever denomination ; for the constitution knows no distinction, has no preference. This, however, had not been practised ; and Mr. S. said he only wished to preserve the constitution and law as it had been in this respect, and he hoped the subject would be recommitted, at the motion of his friend, for the purpose of being modified.

Mr. HOAR said he believed the reason why the proposition giving every person liberty to separate himself from the parish in which he resides, and to withdraw his taxes, passed yesterday, was because it was of such immense magnitude that it was not comprehended. Its operation in destroying the parishes of the Commonwealth he thought was not seen in its true light. He would name an instance of its operation, as it respected taxes on real estate. Two-thirds of the real estate in the town of Brookline, he was informed, was owned by persons who reside in Boston, and are taxed there. If they go to Brookline in summer, it is in May or June, and they are not taxable there. He did not believe, from the well known liberality of the gentlemen so situated that they would withdraw their support from the reverend clergyman there ; but it would depend on persons in Boston, and not on the people of Brookline, whether he should continue to have a support. The effect of the alteration would be of immense extent. If the gentleman who moved the postponement had lived in the country, and had seen, as he had, the operation of causes much more trifling than this, in breaking up parishes, he would not countenance the inconsistency of taking up and forcing through a proposition of this magnitude in one day, and refusing to consider the modifications proposed for averting a part of its evils.

Mr. BOYLSTON said that he now resided in the town of Princeton ; but if he should choose to fix his residence at Roxbury, where he had sometimes resided, by the resolution adopted yesterday, he would be entitled to withdraw his ministerial taxes from the first named town. They paid a salary to the minister there of six hundred dollars, and a fifth part of the tax of the town was levied on

Mr. DANA said it would be a sufficient attestation if the copies were signed by the secretary; but it ought also to be required of the secretary to transmit them to the several towns. For this purpose he moved to amend the fifth resolution by inserting after "transmitted," the words "by him." The amendment was agreed to and the resolutions were adopted.

The fourteen articles of amendment were then read twice; first, together, and afterwards, article by article; and upon the second reading a few amendments were adopted.

*Ordered*, That the secretary cause a competent number of copies of the said resolutions, and of the articles of amendment to be printed, and that the same be attested by him, and transmitted to the several towns in this Commonwealth, as directed in one of said resolutions.

*Ordered*, That a copy of all the amendments made and proposed by this Convention, shall be attested by the president and by the secretary thereof, and transmitted to his excellency the governor, and another copy shall be attested as aforesaid, and engrossed on parchment, and shall, together with the journal of the proceedings of this Convention, and the files thereof, be deposited in the office of the secretary of the Commonwealth.

On the reading of the second article, Mr. FOSTER of Littleton moved that the words "of our Lord" be added in all the amendments after the word "year" whenever it occurs as a date. This was agreed to.

On the reading of the fourth article respecting city corporations, Mr. S. A. WELLS moved to insert "majority of," and Mr. J. PHILLIPS moved to insert "present and voting thereon," so as to have it read that no city government should be constituted in any town unless upon the application of a "majority of" the inhabitants of such town "present and voting thereon." These amendments were agreed to.

In that part of the fifth article which relates to increasing the number which shall entitle a town to choose a representative, the year 1832 was substituted for 1831, upon the suggestion of Mr. JACKSON, that the census, to be taken every tenth year by the United States, might not be officially made known so early as 1831, and every tenth succeeding year.

In the tenth article, on motion of Mr. JACKSON, the words "with this further provision, to wit," were substituted for the word "excepting."

Mr. PARKER of Charlestown moved to amend the same article by adding a proviso, that nothing contained in the article should be construed to deprive the Legislature of any rights which it now possesses in regard to Harvard College.

This motion was determined to be out of order, as none but formal amendments could be received at this stage of the proceedings.

The question whether this article should be proposed to the people for their ratification, was determined in the affirmative—197 to 61.

On the reading of the amendments, article by article, the following question was separately put by the president according to order: "Shall this article of amendment be proposed to the people of this

Commonwealth for their ratification and adoption?" The Convention adopted each of the articles by an affirmative vote on said question; and all of them without a division except the one just mentioned.

After the House had gone through with reading and voting upon the several articles, the President observed that it would be suitable, at the close of their session, to invoke a divine blessing upon their labors and upon the members of the Convention on their return to their homes; to which the House assented, and the President requested the Rev. Mr. FOSTER of Littleton to offer up prayers.

After prayers, at about eight o'clock, on motion of Mr. VARNUM, the Convention adjourned without day.

## ARTICLES OF AMENDMENT.

The following are the articles of amendment as finally agreed to, in the form in which they are to be submitted to the people for ratification and adoption ; together with the resolutions prescribing the manner in which they should be acted upon :

## COMMONWEALTH OF MASSACHUSETTS.

*In the year of our Lord one thousand eight hundred and twenty.*

In the Convention of the Delegates of the People, assembled at Boston on the third Wednesday of November, in the year of our Lord one thousand eight hundred and twenty, for the purpose of Revising and Amending the Constitution of this Commonwealth, pursuant to an act of the General Court, passed on the sixteenth day of June, in the year aforesaid :

*Resolved*, That the following Articles of Amendment of the Constitution of the Commonwealth, which have been made and proposed by this Convention, and which are numbered progressively from one to fourteen inclusive, shall be submitted to the people for their ratification and adoption ; and if the said articles, or any one or more of them, shall be ratified by the people in the manner hereinafter prescribed, the articles so ratified shall become a part of the constitution of this Commonwealth.

*Resolved*, That the people shall be assembled for the purpose aforesaid, in their respective towns and districts, in meetings to be legally warned, and held on the second Monday of April next ; at which meetings, all the inhabitants qualified to vote for senators or representatives in the General Court, may give in their votes by ballot, for or against each of the said articles of amendment ; *provided*, that in every town, containing not more than six thousand inhabitants, the votes may be given on each article by hand-vote, or otherwise, as the selectmen of the respective towns may order and direct in the warrant for calling such meeting. And the selectmen of the respective towns and districts shall preside at such meetings and shall in open meeting receive, sort, count and declare the votes of the inhabitants for and against each of the said articles ; and the clerks of the said towns and districts shall record the said votes, and true returns thereof shall be made out under the hands of the selectmen, or the major part of them, and of the clerk ; and the selectmen shall inclose, seal and deliver the said returns to the sheriff of the county, within fifteen days after the said meetings, to be by him transmitted to the office of the secretary of the Commonwealth, on or before the fourth Wednesday of May next ; or the selectmen shall themselves transmit the same to the said office on or before the day last mentioned.

*Resolved*, That a committee of this Convention shall meet at the

State House, in Boston, on the said fourth Wednesday of May, and shall open and examine the votes then returned as aforesaid, and shall, as soon as may be, certify to his excellency the governor, and also to the General Court, the number of votes so returned for and against each of the said articles of amendment.

*Resolved*, That each of the said articles shall be considered as a distinct amendment, to be adopted in the whole, or rejected in the whole, as the people shall think proper. And in case the votes are given by ballot, every person qualified to vote as aforesaid, may express his opinion on each article as designated by its appropriate number, without specifying in his ballot the contents of the article, and by annexing to each number the word YES, or NO, or any other words of the same import; but the whole shall be written or printed, on one ballot, in substance as follows, to wit:

*Amendments.*

Article first, . . . . . YES or NO.

Article second, . . . . . YES or NO.

&c. to

Article fourteen, . . . . . YES or NO.

And every article that shall appear to be approved by a majority of the persons voting thereon, according to the votes returned and certified as aforesaid, shall be deemed and taken to be ratified and adopted by the people; and all the amendments, so ratified and adopted, shall be promulgated and made known to the people, in such manner as the General Court shall order.

*Resolved*, That a printed copy of these resolutions, with the Articles of Amendment subjoined, shall be attested by the secretary of this Convention, and transmitted by him, as soon as may be, to the selectmen, clerk and delegate or delegates of every town and district in the Commonwealth.

ARTICLE THE FIRST.

The power and the duty of the Legislature to require provision to be made for the institution of the public worship of God, and for the support and maintenance of public teachers, shall not be confined to Protestant teachers, but shall extend and be applied equally to all public Christian teachers of piety, religion and morality; and shall also extend and be applied equally to all religious societies, whether incorporated or unincorporated.

All moneys paid by the subject for the support of public worship and of the public teachers aforesaid, shall, if he require it, be applied to the support of the public teacher or teachers, if there be any, on whose instructions he attends, whether of the same, or of a different sect or denomination from that of the parish or religious society in which the said moneys are raised.

Provided, that all taxes assessed for the support of public worship, and of the public teachers aforesaid, upon the real estate of any non-resident proprietor or proprietors, shall be applied towards the support of public worship in the town, precinct or parish, by which



such taxes are assessed ; unless such proprietor or proprietors shall be resident within this Commonwealth, and shall be of a different sect or denomination of Christians from that of the town, precinct or parish by which such taxes are assessed.

The clause in the third article of the declaration of rights, which invests the Legislature with authority to enjoin, on all the subjects of the Commonwealth, an attendance upon the instructions of public teachers, shall be and hereby is annulled.

No person shall be subjected to trial for any crime or offence for which, on conviction thereof, he may be exposed to imprisonment, or to any ignominious punishment, unless upon presentment or indictment by a grand jury ; except in cases which are or may be otherwise expressly provided for by the statutes of the Commonwealth. And every person charged with any crime or offence shall have a right to be fully heard in his defence by himself and his counsel.

#### ARTICLE THE SECOND.

The political year shall begin on the first Wednesday of January, instead of the last Wednesday of May ; and the General Court shall assemble every year on the said first Wednesday of January, and shall proceed at that session to make all the elections, and do all the other acts, which are by the constitution required to be made and done at the session which has heretofore commenced on the last Wednesday of May. And the General Court shall be dissolved on the day next preceding the first Wednesday of January, without any proclamation, or other act of the governor. But nothing herein contained shall prevent the General Court from assembling at such other times as they shall judge necessary.

The governor, lieutenant governor, and counsellors, shall also hold their respective offices for one year next following the first Wednesday of January, and until others are chosen and qualified in their stead.

The meetings for the choice of governor, lieutenant governor, and senators, shall be held on the second Monday of November in every year, instead of the first Monday of April ; and the members of the house of representatives shall also be chosen at the same meetings ; but the meetings may be adjourned, if necessary, for the choice of representatives to the next day, and again to the day next succeeding, but no further. Provided, however, that such towns or towns and districts, as are or may be united for the choice of a representative, may hold their meetings for that purpose at such time and in such manner as the General Court shall hereafter direct.

All the other provisions of the constitution, respecting the elections and proceedings of the members of the General Court, or of any other officers or persons whatsoever, that have reference to the last Wednesday of May as the commencement of the political year, shall be so far altered as to have the like reference to the first Wednesday of January.

This article shall go into operation on the fourth day of July, in

the year of our Lord, one thousand eight hundred and twenty-one, and the governor, lieutenant governor, counsellors, senators and representatives, and all other state officers who are chosen annually, and who shall be chosen for the year of our Lord one thousand eight hundred and twenty-one, shall hold their respective offices until the first Wednesday of January, in the year of our Lord one thousand eight hundred and twenty-two, and until others are chosen and qualified in their stead; and the first election of the governor, lieutenant governor, senators and representatives, to be had in virtue of this article, shall be had on the second Monday of November, in the year of our Lord one thousand eight hundred and twenty-one.

#### ARTICLE THE THIRD.

[Article First of the Adopted Amendments.]

If any bill or resolve shall be objected to and not approved by the governor; and if the General Court shall adjourn within five days after the same shall have been laid before the governor for his approbation, and thereby prevent his returning it with his objections, as provided by the constitution; such bill or resolve shall not become a law, nor have force as such.

#### ARTICLE THE FOURTH.

[Article Second of the Adopted Amendments.]

The General Court shall have full power and authority to erect and constitute municipal or city governments, in any corporate town or towns in this Commonwealth, and to grant to the inhabitants thereof such powers, privileges and immunities, not repugnant to the constitution, as the General Court shall deem necessary or expedient for the regulation and government thereof; and to prescribe the manner of calling and holding public meetings of the inhabitants, in wards or otherwise, for the election of officers under the constitution, and the manner of returning the votes given at such meetings. Provided, that no such government shall be erected or constituted in any town not containing twelve thousand inhabitants; nor unless it be with the consent and on the application of a majority of the inhabitants of such town, present and voting thereon, pursuant to a vote at a meeting duly warned and holden for that purpose. And provided also, that all by-laws made by such municipal or city government shall be subject, at all times, to be annulled by the General Court.

#### ARTICLE THE FIFTH.

There shall be annually elected in the manner prescribed by the constitution thirty-six persons to be senators instead of forty persons as heretofore required; and not less than nineteen members of the senate shall constitute a quorum for doing business.

The number of districts into which the Commonwealth shall be divided for the purpose of electing senators shall never be less than ten, and the senators shall be so apportioned among the said dis-

tricts, as that no district shall elect more than six ; and no county shall be divided for the purpose of forming such a district.

The several counties in the Commonwealth shall be districts for the choice of senators ; excepting that the counties of Hampshire, Franklin and Hampden shall together form one district for the purpose ; and also that the counties of Barnstable, Nantucket and Dukes County shall together form one district for the purpose ; and the said districts shall be respectively entitled to elect the following number, to wit :

|                                         |   |   |   |   |   |        |
|-----------------------------------------|---|---|---|---|---|--------|
| Suffolk,                                | - | - | - | - | - | six.   |
| Middlesex,                              | - | - | - | - | - | four.  |
| Hampshire, Franklin and Hampden,        | - | - | - | - | - | four.  |
| Berkshire,                              | - | - | - | - | - | two.   |
| Bristol,                                | - | - | - | - | - | two.   |
| Essex,                                  | - | - | - | - | - | six.   |
| Worcester,                              | - | - | - | - | - | five.  |
| Plymouth,                               | - | - | - | - | - | two.   |
| Norfolk,                                | - | - | - | - | - | three. |
| Barnstable, Nantucket and Dukes County, | - | - | - | - | - | two.   |

And the foregoing arrangements of the districts and apportionment of the senators among them, shall remain in force until altered by the General Court, according to the provisions of the constitution.

The members of the house of representatives shall be elected in the following manner. Every corporate town containing 1200 inhabitants, may elect one representative ; and 2400 inhabitants shall be the mean increasing number which shall entitle a town to an additional representative.

In every case where any town is now united to any other town, or to a district, for the purpose of electing a representative, such towns and districts so united are and shall be respectively considered as one town, in all things respecting the election of representative, as provided for in this article.

Every corporate town, containing less than 1200 inhabitants, shall be entitled to elect one representative, every other year only, excepting the years in which the valuation of estates within the Commonwealth shall be settled, when each of said towns shall be entitled to send a representative ; but the Legislature of that year shall never appoint the year in which the next valuation shall be taken or settled.

And the Legislature at their first session, after the census which is now taking under the authority of the United States shall be completed, and after every subsequent census which shall be taken as aforesaid, or under the authority of this Commonwealth, shall divide the towns in each county where there are more than one, which according to the provisions of this article shall not be entitled to send a representative every year into two equal classes ; the first of which shall comprise half the towns in number, and those which contain the greatest population, and each town in this

class may elect a representative the first year after they are so classed.

The second class shall consist of the other corporate towns in the county not entitled to send a representative every year, each of which may elect a representative the second year after they are classed, and if there be an uneven number of such towns in any county, the largest number shall be placed in the second class, and the towns so classed may each thereafter continue to elect one representative every other year, excepting as aforesaid. Provided, that the Legislature may place in different classes any two adjoining towns which may happen to be in the same class, upon their application for that purpose. And each of said classed towns shall be entitled to elect a representative every year, when such towns shall have the number of inhabitants which shall entitle other towns to elect one representative according to the provisions of this article.

And if any two towns herein directed to be classed, shall wish to be united and elect a representative together every year, instead of electing one separately every other year, the Legislature, upon their application for that purpose, shall so unite them, and prescribe the time and place of holding their meetings for the election of their representatives, and the manner in which their choice shall be certified by the selectmen of both or either of said towns; and such towns shall continue so united until the inhabitants of one of them shall have increased to such a number as shall entitle it separately to send a representative; or until one of said towns, by a vote of a major part of the legal voters therein, shall apply to the Legislature to separate them, whereupon it shall be their duty so to do, and to class them in the same manner as they then would and ought to be classed if they had never been united.

And to prevent the house of representatives becoming too numerous, the number of inhabitants which shall entitle a town to elect one representative, and the mean increasing number which shall entitle it to elect more than one, shall be proportionally increased in the year of our Lord one thousand eight hundred and thirty-two and every tenth year afterwards, so that the house of representatives shall never consist of more than two hundred and seventy-five members, excepting in those years in which the valuation is settled. And if any town which contains 1200 inhabitants and upwards shall, in the year of our Lord one thousand eight hundred and thirty-two, or in any tenth year afterwards, be found not to contain the number of inhabitants which, according to the provision aforesaid, shall be requisite to entitle it to send a representative every year, such town shall be classed by the Legislature, and shall thereafter be entitled to send a representative every other year only, until it shall have a competent number to entitle it to send a representative every year; and no town which shall be entitled to send a representative every other year, shall ever be deprived of that privilege.

Every town which shall hereafter be incorporated, shall be entitled

to send one representative, when it shall contain twenty-four hundred inhabitants, and not before.

The members of the house of representatives shall be paid out of the treasury of the Commonwealth for their attendance in the General Court during the session thereof.

Not less than one hundred members of the house of representatives shall constitute a quorum for doing business.

No member of the senate or house of representatives shall be arrested on mesne process, warrant of distress or execution, during his going unto, returning from, or attendance in the General Court.

The council for advising the governor in the executive part of government, shall consist of seven persons, besides the lieutenant governor, instead of nine persons; and four of said council shall constitute a quorum for doing business, instead of five of them as heretofore required.

The counsellors shall be annually chosen from among the people at large, excluding members of the senate and house of representatives, on the first Wednesday in January, by the joint ballot of the senators and representatives assembled in one room, who shall, as soon as may be, in like manner fill up any vacancies that may happen in the council, by death, resignation or otherwise. The counsellors shall have the same qualifications in point of property and residence within the Commonwealth as are required for senators; and not more than one counsellor shall be chosen out of any one senatorial district in the Commonwealth.

In case any person who may be elected a counsellor shall not attend seasonably to take and subscribe the oaths prescribed by the constitution, in the presence of the two houses of the General Court, at the session thereof at which he shall be elected, he may take and subscribe the same before the governor alone, or before the lieutenant governor and any one of the council, who shall have been previously qualified.

#### ARTICLE THE SIXTH.

[Article Third of the Adopted Amendments.]

Every male citizen of twenty-one years of age and upwards (excepting paupers and persons under guardianship) who shall have resided within the Commonwealth one year, and within the town or district in which he may claim a right to vote, six calendar months next preceding any election of governor, lieutenant governor, senators or representatives, and who shall have paid, by himself or his parent, master or guardian, any state or county tax, which shall, within two years next preceding such election, have been assessed upon him in any town or district of this Commonwealth; and also every citizen who shall be by law exempted from taxation, and who shall be in all other respects qualified as above mentioned, shall have a right to vote in such election of governor, lieutenant governor, senators and representatives, and no other person shall be entitled to vote in such elections.

## ARTICLE THE SEVENTH.

[Article Fourth of the Adopted Amendments.]

Notaries public shall be appointed by the governor, in the same manner as judicial officers are appointed, and shall hold their offices during seven years, unless sooner removed by the governor, with the consent of the council, upon the address of both houses of the Legislature.

In case the office of secretary or treasurer of the Commonwealth shall become vacant from any cause during the recess of the General Court, the governor, with the advice and consent of the council, shall nominate and appoint, under such regulations as may be prescribed by law, a competent and suitable person to such vacant office, who shall hold the same until a successor shall be appointed by the General Court.

Whenever the exigencies of the Commonwealth shall require the appointment of a commissary general, he shall be nominated, appointed and commissioned in such manner as the Legislature may by law prescribe.

All officers commissioned to command in the militia may be removed from office in such manner as the Legislature may by law prescribe.

## ARTICLE THE EIGHTH.

[Article Fifth of the Adopted Amendments.]

In the elections of captains and subalterns of the militia, all the members of their respective companies, as well those under as those above the age of twenty-one years, shall have a right to vote.

## ARTICLE THE NINTH.

Justices of the peace may be removed from office like other judicial officers, by the governor, with the consent of the council, upon the address of a majority of the members present of each house of the Legislature; but no address for the removal of any judicial officer shall pass either house of the Legislature until the causes of such removal are first stated and entered on the journal of the house in which it shall originate, and a copy thereof served on the person in office, so that he may be admitted to a hearing in his defence before each of said houses.

The governor and the two branches of the Legislature respectively, shall not hereafter be authorized to propose questions to justices of the supreme judicial court, and require their opinions thereon.

## ARTICLE THE TENTH.

The rights and privileges of the president and fellows of Harvard College, and the charter and constitution thereof, and of the board of overseers as at present established by law, are hereby confirmed, with this further provision, to wit, that the board of overseers, in the election of ministers of churches to be members of said board, shall not hereafter be confined to ministers of churches of any particular denomination of Christians.

## ARTICLE THE ELEVENTH.

[Article Sixth of the Adopted Amendments.]

Instead of the oath of allegiance prescribed by the constitution, the following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military, under the government of this Commonwealth, before he shall enter on the duties of his office, to wit :

"I, A. B., do solemnly swear that I will bear true faith and allegiance to the Commonwealth of Massachusetts and will support the constitution thereof. *So help me God.*"

Provided, that when any person shall be of the denomination called Quakers, and shall decline taking said oath, he shall make his affirmation in the foregoing form, omitting the word "swear" and inserting instead thereof the word "affirm," and omitting the words "So help me God," and subjoining instead thereof, the words "This I do, under the pains and penalties of perjury."

## ARTICLE THE TWELFTH.

[Article Seventh of the Adopted Amendments.]

No oath, declaration or subscription, excepting the oath prescribed in the preceding article, and the oath of office, shall be required of the governor, lieutenant governor, counsellors, senators, or representatives to qualify them to perform the duties of their respective offices.

## ARTICLE THE THIRTEENTH.

[Article Eighth of the Adopted Amendments.]

No judge of any court in this Commonwealth, (excepting the court of sessions) and no person holding any office under the authority of the United States (postmasters excepted) shall at the same time hold the office of governor, lieutenant governor, or counsellor, or have a seat in the senate or house of representatives of this Commonwealth ; and no judge of any court in this Commonwealth (except the court of sessions) nor the attorney general, solicitor general, county attorney, clerk of any court, sheriff, treasurer and receiver general, register of probate, nor register of deeds, shall continue to hold his said office after being elected a member of the Congress of the United States and accepting that trust ; but the acceptance of such trust, by any of the officers aforesaid, shall be deemed and taken to be a resignation of his said office, and judges of the courts of common pleas shall hold no other office under the government of this Commonwealth, the office of justice of the peace and militia offices excepted.

## ARTICLE THE FOURTEENTH.

[Article Ninth of the Adopted Amendments.]

If at any time hereafter any specific and particular amendment or amendments to the constitution be proposed in the General Court and agreed to by a majority of the senators and two thirds of the members of the house of representatives present and voting thereon,

such proposed amendment or amendments shall be entered on the journals of the two houses, with the yeas and nays taken thereon, and referred to the General Court then next to be chosen, and shall be published ; and if, in the General Court next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of the senators and two thirds of the members of the house of representatives present and voting thereon, then it shall be the duty of the General Court to submit such proposed amendment or amendments to the people, and if they shall be approved of and ratified by a majority of the qualified voters voting thereon, at meetings legally warned and holden for that purpose, they shall become part of the constitution of the Commonwealth.

The following form of return was adopted, viz. :

COMMONWEALTH OF MASSACHUSETTS.

Town of \_\_\_\_\_ County of \_\_\_\_\_  
 At a legal meeting of the freeholders and other inhabitants of the town of \_\_\_\_\_ qualified to vote for senators or representatives, holden on the second Monday of April, A. D. 1821, pursuant to a resolution of the Convention of delegates, assembled at Boston on the 16th November, A. D. 1820, for the purpose of revising the constitution of the Commonwealth :

The votes on the several amendments submitted by the Convention, were as follows :

|               |                |       |
|---------------|----------------|-------|
| Article 1st.  | Yeas,          | Nays, |
| Article 2nd.  | Yeas,          | Nays, |
|               | &c. &c. &c. to |       |
| Article 14th. | Yeas,          | Nays. |

Attest,—A. B., *Town Clerk.*

B. C. }  
 D. E. } *Selectmen.*  
 F. G. }



## ADDRESS TO THE PEOPLE.

The following is the Address of the Convention to the People of Massachusetts, accompanying the Amendments proposed to be made to the Constitution :

## FELLOW-CITIZENS,

It was provided in the constitution, established in the year one thousand seven hundred and eighty, that revision might be had, after an experiment of fifteen years. When these years had elapsed, the people declared that they were satisfied ; and that they desired no change. The same satisfaction was manifested during the next twenty-five years, and would probably have still continued, if the separation of Maine from Massachusetts had not made it proper to take the opinion of the people on the expediency of calling a *Convention*.

It appeared that not one *fourth part* of the qualified voters in the State saw fit to express any opinion ; and that of the eighteen thousand three hundred and forty-nine votes given in, six thousand five hundred and ninety-three were *against* a revision.

We have inferred from these facts, that you did not desire any important and fundamental changes in your frame of government ; and this consideration has had its just influence on our deliberations, in revising every part of the constitution, which we were required to do, by the words of the law, under which we are assembled.

We have kept in view that the will of the majority can alone determine what the powers of government shall be, and also the manner in which these powers shall be exercised ; and that it is, consequently, your *exclusive* right to decide, whether all, or any of the amendments, which we think expedient, shall be adopted or rejected.

In the performance of our duty, we have been mindful of the character of MASSACHUSETTS ; and, that the profit of *experience* is justly valued, and that the precious right of self-government is well understood in this community. Perfect unanimity is not to be expected in a numerous assembly. Whatever difference of opinion may have occurred as to expediency, there has been no difference as to the ultimate object, viz., the public security and welfare. If we have not all agreed in every measure which we recommend, we are satisfied, that natural, and honest difference of opinion, must ever prevent, in a like numerous meeting, greater accordance than has prevailed among us.

Every proposed change or amendment has been patiently and fairly examined, and has been decided upon with the utmost care and solicitude to do right.

We have the fullest confidence that you will take these things into view, when you perform the serious duty of deciding, for yourselves, and for successive generations, on the result of our efforts.

In framing a constitution, or revising one, for an extensive Commonwealth, in which various interests are comprised, nothing more can be hoped for, than to establish general rules, adapted to secure the greatest good for the whole society. The revised constitution, which we now respectfully submit to you, can only be considered as one general law, composed of connected and dependent parts. If any one part, considered by itself, seem not to be the best that could be, its merit and the justice of its claim to approbation can be known only by its connection in the system to which it appertains.

With these remarks we beg leave to state the amendments which we have agreed on, and our reasons for having done so.

#### THE DECLARATION OF RIGHTS.

It is known to us, that the eminent men who framed the constitution under which we have lived bestowed on the only article of the declaration of rights, which has occasioned much discussion among us, the greatest attention. They appear to have considered religion in a twofold view; first, as directory to every rational being, in the duties which he owes to the Creator of the universe; but leaving to every one to decide for himself, on the manner in which he shall render his homage, avow his dependence, express his gratitude, and acknowledge his accountability; and, secondly, as a social duty, prescribing rules to men in their intercourse with each other as members of the same family. They held social worship to be most intimately connected with social welfare. They believed moral excellence to be no less the effect of example, and of habit, than of precept. They seem to have been convinced, that in proportion as the members of civil society are impressed with reverence for the social rules contained in revealed religion, will they be faithful in performing those obligations on which political happiness depends. Upon such principles they rested those provisions which require an habitual observance of the Sabbath, and the support of public teachers in the sacred offices of that day. In all these sentiments we do most heartily concur.

But we have thought it necessary to propose some changes in the third article.

The public sentiment on that part of the article which invests the Legislature with authority to enjoin attendance on public worship, has long been definitely expressed, and is well understood; and we, therefore, propose that so much of this article as relates to this subject, should be annulled.

We are also of opinion that members of all religious societies ought to have the right and privilege to join, and worship with, any other society of the same denomination; as they now have the right to join themselves to any society, of a different denomination

from that with which they have worshipped;—furthermore, that the power and duty of the Legislature to require provision to be made for the institution of public worship, and for the support and maintenance of public teachers, should extend, and be applied as well to societies which are unincorporated, as to those which are incorporated.

We recommend also, a provision, that all taxes assessed for the support of public worship, upon real estate of any non-resident proprietor, shall be applied towards the support of public worship in the town, precinct, or parish, by which such taxes are assessed; unless such proprietor shall be resident within the Commonwealth, and shall be of a different denomination of Christians from that of the town, precinct, or parish, by which such taxes are assessed.

We propose further to amend the declaration of rights, so as to provide, that persons on trial for crimes may be heard by themselves *and* counsel, instead of themselves *or* counsel, as the article now stands.

We propose another amendment, that no person shall suffer imprisonment, or other ignominious punishment, on official information; nor unless on indictment by a grand jury; except in cases expressly provided for by law. This amendment takes from public prosecutors the common law right to arraign, of their own authority, any citizen for misdemeanors, or crimes, without the intervention of a grand jury representing the people of each county.

#### ALTERATION OF THE POLITICAL YEAR.

We recommend that there should be ordinarily but one session of the General Court in a year. We believe that one is sufficient; that the expense of legislation will be thereby diminished, and that it will be convenient to bring the common and the political year into conformity.

A necessary consequence of this change is an alteration of the time of holding elections; the day most convenient for this purpose, in the opinion of the Convention, is the second Monday of November. We propose that all the elections of State officers, which are to be made by the people, shall be made on that day. This provision will lessen the number of days, which, by our present constitution, must be devoted to elections. It will, we believe, induce a fuller attendance of the people, and a more certain expression of the public voice, in the important duty of choosing public officers.

#### ELECTORS.

We are satisfied that the qualifications as now required in *electors*, produce some inconveniences, and are liable to some abuses. After a patient investigation of this subject, we have concluded that a residence of *twelve months* within the State, and of *six months* in a town, or district, next preceding an election, and payment of a state or county tax, in the Commonwealth, constitute a uniform and intelligible rule, as to the right of voting; and we propose the adoption

of this rule, in all elections of State officers, and the abolition of all other qualifications now required.

We believe that the change, which we recommend in this respect, will relieve *selectmen* from much perplexity, and will enable them easily to distinguish between those who have a right to vote, and those who have not.

#### THE SENATE.

After the most careful and faithful examination of the principles of government, we have not found it expedient to change the basis on which the *senate* was placed, by the constitution which we have revised. It is an admitted principle, that the legislative power should be given to *two distinct assemblies*, each having an absolute negative on the other.

In considering this subject, we have distinguished between **THE PEOPLE**, of whom we are ourselves a part, and those who may be chosen *to legislate*. It is the *people* who are to be secured, in their rights and privileges, by a constitution, and not their *public servants*. This object can only be effected by a clear and permanent limitation of the power which is to be exercised.

The **PEOPLE** may impart whatsoever power they see fit. Their security consists in doing this in such manner, that the trust which they create may not be abused, nor the public welfare betrayed. It is therefore wise to provide for frequent elections; and to require certain qualifications in the elected; and the concurrence of different legislative branches on all public laws; and so to constitute those branches, as that no act shall obtain their joint approbation, which is not intended to promote the common welfare.

All free governments of modern times have found it indispensable, not only to have two distinct legislative branches, but to place them on such different foundations as to preclude, as much as possible, all such dangerous sympathy and union, as may govern and direct the will of a single assembly.

If the number of inhabitants be the rule by which the members of the two branches are to be apportioned, and all are to be chosen at the same time, and by the same electors, we think that the safety which the constitution is intended to effect, may not, always, be obtained. If an election should take place when very strong and general excitements are felt, (and from such; no human society can be always exempt) there would be little to choose between placing legislators so elected in the same, or in two different assemblies.

We repeat that the people's agents ought ever to be distinguished, in settling a frame of government, from the people themselves; and that no more should be hazarded on the manner in which power may be used, than necessarily must be, to give power enough to do that which should be done.

The mode in which the two branches should be constituted, to secure the check which we consider to be so highly important, is

the only point, as to the senate, which has been much discussed among us.

In some of the states in our national confederacy, elections for two or more years have been adopted, as a security for the independence and fidelity of senators. In others of them, a senator must have a large landed estate; in others, such an estate is a required qualification in electors; and in some, a landed estate is required, both in the elector and the senator.

The basis adopted in the constitution of this State is, that senators shall be apportioned, throughout the State, according to the amount of public taxes paid in districts of the State. That is, that the liability to be taxed, shall be accompanied by the right to be represented. We have not heard that this principle has been complained of by the people; nor do we believe it is justly exceptionable, in itself; on the contrary, the experience of forty years entitles it to the most entire respect and confidence. We have not thought it expedient, nor do we believe that you expected of us, to make any fundamental change in this department. We have done no more than to make the necessary provisions as to districts, and to fix the number of senators. We recommend that the number should be thirty-six; this number can be more conveniently distributed than any other throughout the State. A smaller number is not sufficient to perform the duty required of the senate; nor should the power of negating the will of the house of representatives, be confided to a smaller number.

#### THE HOUSE OF REPRESENTATIVES.

We have found great difficulty in amending the representative system in a satisfactory manner. We have all agreed, that whether the representatives are few, or many, representation should be according to population, in this branch. It was the general opinion, that the number should be reduced; that town representation should be preserved; that payment should be made from the State treasury. Such mode of payment has been repeatedly voted in the house, and on one occasion it obtained the concurrence of the senate. There is reason to believe that it will become the established mode of payment. But if it be so, and the present system of representation continues, the expense must soon become an insupportable burthen. A house composed of one hundred or one hundred and fifty members, may be fully sufficient for all purposes of legislation; but so great a reduction could not be made without dividing the State into districts, and consequently giving up representation by towns.

We endeavored in the system which we submit to you—1. To reduce the number; 2. To preserve the privileges of town representation; 3. To provide for payment out of the State treasury; 4. To insure a general and constant attendance of the members throughout the session.

To accomplish these objects, we recommend that twelve hundred inhabitants should have one representative, and that twenty-four hun-

dred be the mean increasing number for every additional representative.

But as nearly one half of the towns in the State contain on an average about eight hundred inhabitants, we propose that these towns should each choose a representative every other year, and that they should be divided, by the Legislature, into two classes for this purpose ; one or the other of which classes will choose every year.

To show the application of this system ; about seventy-four representatives will come every year, from the classed towns, which will be one representative for every 1632 inhabitants in all the classed towns ; from those towns containing between twelve hundred and twenty-four hundred, will come one representative for every 1650 inhabitants ; from those towns containing more than thirty-six hundred inhabitants will come one representative for every 2400 inhabitants. These calculations, (necessarily taken from the census of the year 1810) are not precisely accurate ; but they are sufficiently so to show the effect of the system.

It is apparent that towns having between twelve hundred and thirty-six hundred inhabitants, can send but one representative ; and that there will be large fractions in some of these towns. Perfect equality is not attainable under any system. There are fewer inequalities in the proposed system, than in any which we have been able to form, if the four objects which we have mentioned are to be provided for ; and we believe that the progress of population will constantly diminish those inequalities which may now exist.

We propose that in those years in which the valuation is settled, every town shall be represented.

By the proposed system the number of representatives will be about two hundred and sixty. We have thought it proper to offer to you further provisions, intended to prevent an increase, in the number of representatives, over two hundred and seventy-five, in any future time. This may easily be done, by empowering the Legislature to augment the ratio, after successive enumerations of the inhabitants. There was very little difference of opinion among us on the expediency of providing, that no town shall be hereafter incorporated with the right of sending a representative, unless it contain twenty-four hundred inhabitants.

If you are not willing to district the Commonwealth to elect members of the house ; if you are not willing to continue the present mode of numerous representation, with the liability to the enormous expense which would accrue from paying out of the public treasury, some such system as we propose must be resorted to. We will not say that this is the best that could be ; but we may justly say, that we have spared no exertion to form, and to present to you, the best which we could devise.

#### LIEUTENANT GOVERNOR AND COUNCIL.

We recommend that the lieutenant governor should have the like qualifications as are required in the chief magistrate, for the obvious

reason, that the duties of the executive department may devolve on him.

During the last fifteen years the counsellors have been chosen by the Legislature, from the people at large, after an election from among those citizens, who were returned as senators and counsellors, followed by resignation. Experience has shown no inconvenience in this mode of election; and we have deemed it to be proper so to amend the constitution, as to establish this mode. This change, which we propose, is, in effect, nothing more than doing away the useless form of choosing from the senate. We did not prefer to elect counsellors by a general ticket, because we believe that there would be some difficulty in agreeing on candidates; and that the electors, throughout the State, would not have such knowledge of candidates, as would enable them to exercise the right of suffrage in a manner satisfactory to themselves. We did not prefer to choose counsellors in districts, because we were of opinion that it would not be agreeable to the citizens to be associated to exercise the right of suffrage, on this occasion, as they would not be so united on any other. And that it would be a useless labor and expense to form such districts, and an unnecessary burden on the people to meet and vote in them.

We conceive that a choice by the Legislature, is a choice by the people, through the agency of their public servants. That counsellors so chosen, and who enter on the duties assigned to them as soon as they are chosen, will be more independent of the chief magistrate, and more independent of those who desire executive favor, than if chosen in any other mode, though not less responsible to the people, because elected by the joint ballot of the two houses. We have all concurred in the opinion, that more than seven counsellors are not necessary.

#### THE JUDICIARY.

In the judicial department, we think two amendments are expedient.

An independent judiciary is a fundamental principle of a free government. We cannot so well express our sentiments on this important subject, as by referring to the twenty-ninth article of the declaration of rights.

It is there said, "It is the right of every citizen to be tried by judges as free, impartial, and independent, as the lot of humanity will admit:" and therefore, "that judges should hold their offices as long as they behave themselves well."

The judges have not such tenure of office, unless the constitution be understood to mean, that they are not liable to removal, until they have had an opportunity to show that the alleged causes for removal are unfounded, or insufficient. The Legislature, in removing a judge, exercises not only a discretionary, but a judicial power. Judgment cannot justly be given, in any case affecting any interest, even of the humblest citizen, unless the cause has

been first stated, and it has been permitted to him to show, what he considers to be the truth of his case.

It cannot, then, be consistent with the plainest principles of justice, that the public functions of a citizen, and perhaps his reputation, may be taken from him, without any other notice from those who may exercise such power, than that they have exercised it, and that his relation to the public has ceased.

In whatever estimation we may hold the rights and interests of any individual who sustains a high judicial office, it is rather the public right and interest, which move us to propose the subjoined amendment.

The people can have no dearer interest in anything pertaining to government, than in the interpretation of the laws, and in the administration of justice, affecting life, liberty, property, and character. The constitution, with the explanatory amendment which we propose, secures to the people the unquestionable right of removing the unfit, the unworthy, and the corrupt; while it secures to them the no less valuable right of preserving to themselves, the able, the upright, and the independent magistrate.

We propose, therefore, so to amend the constitution as to require that no judicial officer shall be removed from office, until the alleged causes of removal are stated on the records of the Legislature; nor until the individual, thereby affected, shall have had an opportunity to be heard.

In the second article of the third chapter it is provided, that each branch of the Legislature, as well as the governor and council, shall have authority to require the opinion of the judges, on important questions of law, and upon solemn occasions. We think this provision ought not to be a part of the constitution; because, *First*, each department ought to act on its own responsibility. *Second*. Judges may be called on to give opinions on subjects, which may afterwards be drawn into judicial examination before them, by contending parties. *Third*. No opinion ought to be formed and expressed, by any judicial officer, affecting the interest of any citizen, but upon full hearing, according to law. *Fourth*. If the question proposed should be of a public nature, it will be likely to partake of a political character; and it highly concerns the people that judicial officers should not be involved in political or party discussions.

We, therefore, recommend that this second article should be annulled.

#### SECRETARY AND TREASURER.

We recommend that the executive should be empowered to fill vacancies occurring in these departments, during the recess of the General Court, until a constitutional election is made.

#### MILITIA.

We propose that the office of commissary general should not be filled by legislative election; nor in any other manner, excepting



as the Legislature may by law provide, if such an officer should, hereafter, be necessary.

As minors are required by law to perform military duty, and have consequently a direct interest in the qualifications for office in those whom they are holden to obey, the want of discretion, which is legally affirmed of minors in other cases, is not applicable to this; and we have, therefore, proposed an amendment, which authorizes those minors, who are enrolled in the militia, to vote in the choice of officers.

To diminish expense in the militia service, and to secure able and faithful performance of duty therein, we think it expedient to empower the Legislature to provide, by law, for the removal of officers, in certain cases.

#### OATHS OF OFFICE.

We recommend that the oath of abjuration be abolished. However proper this oath may have been, while this country was maintaining its conflict for independence with the mother country, the success of that conflict, and the lapse of time, have rendered that oath inapplicable to our condition.

We have agreed that the declaration of belief in the Christian religion ought not to be required in future; because we do not think the assuming of civil office a suitable occasion for so declaring; and because it is implied, that every man who is selected for office, in this community, must have such sentiments of religious duty as relate to his fitness for the place to which he is called.

#### DISQUALIFICATIONS FOR OFFICE.

Some amendments are recommended in this division of the constitution, founded on one or other of these principles, viz.: *First*. To prevent the exercise, by the same individual, of those powers of government, which the constitution ordains to be kept separate. *Secondly*. To preserve that distinction between the National and State governments, which the principles, on which these governments are relatively founded, require.

#### NOTARIES PUBLIC.

No difference of opinion occurred, on the expediency of transferring the appointment of these officers from the legislative, to the executive department.

#### HARVARD UNIVERSITY.

We have thought it proper to inquire into the present state of this ancient and respectable institution, and have done this by the agency of a fully competent committee. We have made this inquiry, because this seminary has experienced the patronage of government from its earliest foundation; and was justly held to be worthy of appropriate constitutional provisions, by our predecessors. It appears that the powers conferred on Harvard University have always been exercised, and that the duties required of it have always been performed, with a sincere and ardent desire to promote

the diffusion of useful knowledge ; and to establish and preserve an honorable reputation in literature and morals in this community.

We have, however, thought it proper, with the consent and approbation of the corporation and overseers of the University, to propose to you, that the constitution should be so amended as to make ministers of the gospel, of any denomination, eligible to the office of overseers.

For further illustration of this interesting subject, we beg leave to refer to the report of the committee, which was read in Convention, and ordered to be published.\*

#### INCORPORATION OF CITIES.

It appeared to us, that it would be convenient, and proper, that towns containing more than twelve thousand inhabitants, should, on application of their qualified voters, by petition to the Legislature, be incorporated with municipal or city powers and privileges. Without such powers and privileges the inhabitants of such towns must continue to vote in one meeting, however numerous they may become. This is already found to be an inconvenience in two towns, for the removal of which, provision ought to be made. Under the limitations and restrictions which we have provided, we can see no reason why the power to incorporate, should not be vested in the Legislature. And we therefore recommend an alteration of the constitution, so as to effect this purpose.

#### PROVISION FOR FUTURE AMENDMENTS.

It may be necessary, that specific amendments of the constitution should hereafter be made. The preparatory measures in assembling a Convention, and the necessary expense of such an assembly, are obstacles of some magnitude, to obtaining amendments through such means ; we propose that whenever two thirds of the house of representatives, and a majority of the senate in two successive Legislatures, shall determine that any specific amendment of the constitution is expedient, such proposed amendment shall be submitted to the people ; and if accepted by the people, the constitution shall be amended accordingly. We believe that the constitution will be sufficiently guarded from inexpedient alterations, while all those which are found to be necessary, will be duly considered and may be obtained with comparatively small expense.

#### MODE OF SUBMITTING AMENDMENTS.

We have determined that it is not expedient to make a new draft of the constitution ; we believe it would be more acceptable to you, to see the proposed amendments separately. We therefore send them to you in this manner ; and numbered successively ; and accompanied by a form, in which assent or dissent may be easily expressed, and made known.

You will perceive that if the amendments are adopted, the amended constitution will go into operation on the fourth day of

\*[Pages 527-532 of this volume.]

July, in the present year ; and that the first elections will take place on the second Monday of November next ; and that the state officers then chosen will commence their official duties on the first Wednesday of January, next following.

After due deliberation, we have decided that it is most expedient and proper that a large Committee of the Convention shall be in session on the fourth Wednesday of May next, to receive the returns from the several towns ; and that this committee shall examine the returns, and certify the result to the governor, and to the Legislature, which will be in session on and after the last Wednesday of May next. The Legislature will then declare to the people, in such manner as the Legislature may see fit, the will of the people on the amendments, which we submit to them.

We think this, fellow-citizens, a proper occasion to allude to those grateful sentiments which we feel in common with yourselves for the blessings which have been experienced in this highly favored community.

That pious, virtuous, well-informed men should have been inspired to seek a home on these shores, and should have been supported in all the perils inseparable from their enterprise ; that their intelligence, and manly virtues, should have been transmitted through successive generations to descendants, who dared to will and to effect a termination of all political connection with a powerful kingdom ; and these descendants should have been able, in the midst of war and of civil dissention, to establish a republic so wisely balanced, as to accomplish every rational and beneficent purpose which they had in view, are subjects which come to our recollection, at this time, with peculiar interest. We do feel, and it becomes us to acknowledge, that we are a favored and a happy people in our national and domestic relations ;—and especially that while so much of the civilized world is struggling with serious and fearful difficulties, it is permitted to this community, peaceably to assemble, and to deliberate, and decide on the best means of securing and perpetuating social benefits and unquestioned rights.

Among the duties of gratitude is that of showing, that we are worthy of these blessings, by conscientiously preserving them : among the obligations which are inseparably connected with these blessings, is that of transmitting them, to those who are to come. as faithfully, as they have been guarded for us.

In Convention, Jan. 9, 1821—read and accepted.

A true copy,

ISAAC PARKER, *President.*

Attest, BENJ. POLLARD, *Secretary.*

# APPENDIX.

In accordance with the second of the resolves finally adopted by the Convention, the people assembled in their respective towns and districts, on Monday, April 9th, 1821, and voted upon the fourteen amendments submitted to them.

The result of the balloting was as follows:

| COUNTIES.              | 1.     |        | 2.     |        | 3.     |        | 4.     |        | 5.     |        | 6.     |        | 7.     |        |
|------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
|                        | YES.   | NO.    | YES.   | NO.    | YES.   | NO.    | YES.   | NO.    | YES.   | NO.    | YES.   | NO.    | YES.   | NO.    |
| Suffolk, -             | 1786   | 908    | 1929   | 1158   | 258    | 108    | 2473   | 213    | 1659   | 1056   | 2562   | 121    | 1842   | 852    |
| Essex, -               | 1429   | 2138   | 1333   | 2284   | 1823   | 1562   | 1653   | 1720   | 491    | 3096   | 2245   | 1290   | 1898   | 2013   |
| Middlesex, -           | 1996   | 1877   | 1875   | 2055   | 2668   | 876    | 1520   | 2023   | 1481   | 2414   | 3030   | 723    | 1842   | 1583   |
| Plymouth, -            | 897    | 1645   | 617    | 1620   | 751    | 1100   | 432    | 1548   | 189    | 2198   | 962    | 899    | 502    | 1379   |
| Bristol, -             | 1115   | 2015   | 387    | 1703   | 433    | 1530   | 168    | 1861   | 63     | 2147   | 1399   | 253    | 1399   | 253    |
| Barnstable, -          | 321    | 160    | 424    | 62     | 413    | 38     | 352    | 102    | 344    | 145    | 435    | 7      | 300    | 125    |
| Dukes and Nantucket, - | 153    | 68     | 151    | 44     | 75     | 14     | 169    | 23     | 140    | 43     | 171    | 15     | 149    | 39     |
| Norfolk, -             | 920    | 1337   | 881    | 1579   | 1314   | 902    | 844    | 1402   | 786    | 1513   | 1209   | 1015   | 918    | 1260   |
| Worcester, -           | 1419   | 4094   | 2025   | 3600   | 2968   | 2214   | 2271   | 2748   | 1919   | 3442   | 3067   | 2065   | 2525   | 2323   |
| Hampshire, -           | 595    | 1297   | 1254   | 635    | 1280   | 553    | 1193   | 607    | 960    | 901    | 1052   | 755    | 1169   | 561    |
| Hampden, -             | 410    | 1036   | 766    | 705    | 769    | 531    | 649    | 661    | 259    | 1144   | 637    | 763    | 758    | 563    |
| Franklin, -            | 657    | 1313   | 1299   | 675    | 1297   | 539    | 1177   | 695    | 938    | 932    | 1300   | 448    | 1170   | 526    |
| Berkshire, -           | 667    | 1659   | 1623   | 808    | 1578   | 730    | 1467   | 803    | 685    | 1728   | 1603   | 650    | 1358   | 698    |
| Total, -               | 11,065 | 19,547 | 14,164 | 16,728 | 17,949 | 10,707 | 14,368 | 14,306 | 9,904  | 20,799 | 18,702 | 10,150 | 14,174 | 13,517 |
| COUNTIES.              | 8.     |        | 9.     |        | 10.    |        | 11.    |        | 12.    |        | 13.    |        | 14.    |        |
|                        | YES.   | NO.    | YES.   | NO.    | YES.   | NO.    | YES.   | NO.    | YES.   | NO.    | YES.   | NO.    | YES.   | NO.    |
| Suffolk, -             | 2445   | 241    | 1789   | 907    | 1433   | 1232   | 2528   | 140    | 2464   | 211    | 2585   | 95     | 2489   | 205    |
| Essex, -               | 2342   | 1155   | 1172   | 2107   | 800    | 2660   | 1806   | 1549   | 1465   | 1852   | 1992   | 1415   | 1472   | 2062   |
| Middlesex, -           | 3465   | 465    | 1616   | 1642   | 1117   | 2346   | 2611   | 632    | 1953   | 1178   | 2592   | 597    | 2492   | 886    |
| Plymouth, -            | 1709   | 319    | 451    | 1247   | 274    | 1567   | 925    | 623    | 588    | 941    | 1039   | 514    | 780    | 892    |
| Bristol, -             | 735    | 1119   | 200    | 1638   | 133    | 1730   | 557    | 1264   | 369    | 1404   | 530    | 1197   | 674    | 1318   |
| Barnstable, -          | 438    | 2      | 336    | 60     | 207    | 211    | 374    | 4      | 285    | 25     | 387    | 2      | 863    | 64     |
| Dukes and Nantucket, - | 155    | 16     | 90     | 76     | 87     | 88     | 128    | 32     | 136    | 25     | 145    | 18     | 155    | 17     |
| Norfolk, -             | 1747   | 543    | 890    | 1278   | 584    | 1651   | 1268   | 910    | 1081   | 1114   | 1371   | 803    | 857    | 1376   |
| Worcester, -           | 3953   | 1242   | 2310   | 2393   | 1472   | 3389   | 2307   | 1954   | 2252   | 2283   | 2811   | 1805   | 3106   | 1834   |
| Hampshire, -           | 1377   | 423    | 1106   | 600    | 586    | 1334   | 1038   | 566    | 571    | 1077   | 1035   | 542    | 1097   | 615    |
| Hampden, -             | 1128   | 240    | 454    | 848    | 422    | 905    | 812    | 436    | 640    | 640    | 779    | 436    | 834    | 399    |
| Franklin, -            | 1430   | 318    | 1072   | 597    | 769    | 938    | 1156   | 509    | 918    | 735    | 1195   | 452    | 899    | 798    |
| Berkshire, -           | 189    | 361    | 985    | 1145   | 336    | 2057   | 1542   | 615    | 1160   | 995    | 1657   | 537    | 1107   | 1205   |
| Total, -               | 22,726 | 6,444  | 12,471 | 14,518 | 8,020  | 20,123 | 17,552 | 9,244  | 13,782 | 12,480 | 18,048 | 8,412  | 16,325 | 11,661 |

## RECAPITULATION.

|                             | YEAS.  | NAYS.  | MAJORITY.           |
|-----------------------------|--------|--------|---------------------|
| 1. Bill of Rights,          | 11,065 | 19,547 | 8,482 negative.     |
| 2. Political Year,          | 14,164 | 16,728 | 2,564 negative.     |
| 3. Governor's Negative,     | 17,949 | 10,707 | 7,242 affirmative.  |
| 4. City Government,         | 14,368 | 14,306 | 62 affirmative.     |
| 5. Senate and House,        | 9,904  | 20,729 | 10,825 negative.    |
| 6. Qualification of Voters, | 18,702 | 10,150 | 8,552 affirmative.  |
| 7. Notaries, &c.,           | 14,174 | 13,577 | 657 affirmative.    |
| 8. Militia Voters,          | 22,726 | 6,444  | 16,282 affirmative. |
| 9. Removal of Judges,       | 12,471 | 14,518 | 2,047 negative.     |
| 10. Harvard College,        | 8,020  | 20,123 | 12,103 negative.    |
| 11. Oath of Allegiance,     | 17,552 | 9,244  | 8,308 affirmative.  |
| 12. Repeal of Test,         | 13,782 | 12,480 | 1,302 affirmative.  |
| 13. Incompatibilities,      | 18,048 | 8,412  | 9,636 affirmative.  |
| 14. Mode of Amendments,     | 16,325 | 11,661 | 4,664 affirmative.  |

From the towns of Chesterfield, New Ashford, Florida and Randolph, there was no return. The returns from Longmeadow, Saugus and Provincetown, were informal. The returns of these towns, if accepted, would not have varied the result. Longmeadow gave a majority of 28 in favor of the fourth article, Saugus a majority of 25 against it, and Provincetown a majority in favor of it.

In accordance with the third of the resolves, the committee of the Convention met at the State House, on Wednesday, May 24th, 1821, and examined the votes returned for and against each of the articles of amendment. They submitted the following report of their doings :

## COMMONWEALTH OF MASSACHUSETTS.

*In the Senate Chamber, May 24th, 1821.*

The committee appointed by the Convention of the Delegates of the people of Massachusetts, held in Boston, on the third Wednesday of November, A. D. 1820, for the purpose of revising and amending the constitution of said Commonwealth, assembled according to a resolution of said Convention, and having opened and examined the returns of votes from the several towns and districts within the Commonwealth, do certify that the number of votes duly returned, for and against each article of amendment submitted to the people by the Convention, is as stated in the following schedule, viz. :

|         |       |        |       |        |       |
|---------|-------|--------|-------|--------|-------|
| Article | 1st,  | 11,065 | Yeas, | 19,547 | Nays. |
| "       | 2nd,  | 14,164 | "     | 16,728 | "     |
| "       | 3d,   | 17,949 | "     | 10,707 | "     |
| "       | 4th,  | 14,368 | "     | 14,306 | "     |
| "       | 5th,  | 9,904  | "     | 20,729 | "     |
| "       | 6th,  | 18,702 | "     | 10,150 | "     |
| "       | 7th,  | 14,174 | "     | 13,517 | "     |
| "       | 8th,  | 22,726 | "     | 6,444  | "     |
| "       | 9th,  | 12,471 | "     | 14,518 | "     |
| "       | 10th, | 8,020  | "     | 20,123 | "     |

|               |              |             |
|---------------|--------------|-------------|
| Article 11th, | 17,552 Yeas, | 9,244 Nays. |
| " 12th,       | 13,782 "     | 12,480 "    |
| " 13th,       | 18,848 "     | 8,412 "     |
| " 14th,       | 16,325 "     | 11,671 "    |

(Signed by)

ISAAC PARKER,  
J. B. VARNUM,  
BENJAMIN PICKMAN,  
THOMAS GREENLEAF,  
DANIEL HOWARD,  
JOSEPH LOCKE,  
NATHAN WILLIS,  
THOMAS H. BLOOD,  
JONAS SIBLEY,  
TIMOTHY PAIGE,  
BEZALEEL LAWRENCE,  
JONES GODFREY,  
SHEPHERD LEACH,  
SAMUEL DANA.

RUSSELL FREEMAN,  
VARNEY PEARCE,  
ELIHU HOYDEN,  
SAMUEL PORTER,  
ENOS FOOTE,  
GEORGE CONANT,  
JOSIAH HUSSEY,  
CHARLES TURNER,  
JOHN ENDICOTT,  
BENJAMIN RUSSELL,  
JOHN PHILLIPS,  
WILLIAM PEARCE,  
WILLIAM BARTLETT,  
CHARLES WHITE.

The foregoing report having been submitted to the Legislature, the following action was had :

#### COMMONWEALTH OF MASSACHUSETTS.

*In Senate, May 30th, 1821.*

Read and committed to the Hon. Messrs. WILLIAMS, SHAW, and AUSTIN, with such as the honorable house may join, to consider and report in what manner such articles as have been adopted by the people, shall be promulgated and made known.

Sent down for concurrence.

JOHN PHILLIPS, *President.*

*House of Representatives, May 30th, 1821.*

Read and concurred, and Messrs. PRESCOTT of Boston, SPRAGUE of Salem, LAWRENCE of Groton, SMEAD of Greenfield, are joined.  
JOSIAH QUINCY, *Speaker.*

The first full proceeding of the Legislature was the passage of a resolve, approved June 5th, 1821, as follows :

#### RESOLVE

*For publishing the Amendments to the Constitution.*

Whereas the Convention of the Delegates of the people, assembled at Boston, on the third Wednesday of November, in the year of our Lord one thousand eight hundred and twenty, for the purpose of revising and amending the constitution of the Common-

wealth, pursuant to an act of the General Court, passed on the sixteenth day of June, in the year aforesaid, submitted certain articles of amendment of the constitution to the people, for their ratification and adoption : and whereas it appears by a certificate of the committee of the said Convention, that the following articles of amendment, so submitted as aforesaid, have been ratified and adopted by the people, in the manner directed by the said Convention, and have thereby become a part of the constitution of this Commonwealth, to wit :

#### ARTICLE THE FIRST.

If any bill or resolve shall be objected to, and not approved by the governor ; and if the General Court shall adjourn within five days after the same shall have been laid before the governor for his approbation, and thereby prevent his returning it with his objections, as provided by the constitution ; such bill or resolve shall not become a law, nor have force as such.

#### ARTICLE THE SECOND.

The General Court shall have full power and authority to erect and constitute municipal or city governments, in any corporate town or towns in this Commonwealth, and to grant to the inhabitants thereof, such powers, privileges and immunities, not repugnant to the constitution, as the General Court shall deem necessary or expedient for the regulation and government thereof ; and to prescribe the manner of calling and holding public meetings of the inhabitants, in wards or otherwise, for the election of officers under the constitution, and the manner of returning the votes given at such meetings : Provided, that no such government shall be erected or constituted in any town not containing twelve thousand inhabitants ; nor unless it be with the consent, and on the application of a majority of the inhabitants of such town, present and voting thereon, pursuant to a vote at a meeting duly warned and holden for that purpose : and provided also, that all by-laws, made by such municipal or city government, shall be subject, at all times, to be annulled by the General Court.

#### ARTICLE THE THIRD.

Every male citizen of twenty-one years of age and upwards, (excepting paupers and persons under guardianship) who shall have resided within the Commonwealth one year, and within the town or district in which he may claim a right to vote, six calendar months, next preceding any election of governor, lieutenant governor, senators or representatives, and who shall have paid, by himself or his parent, master or guardian, any state or county tax, which shall, within two years next preceding such election, have been assessed upon him in any town or district of this Commonwealth ; and also every citizen who shall be by law exempted from taxation, and who shall be in all other respects qualified as above mentioned ; shall have a right to vote in such election of governor, lieutenant governor, senators and representatives, and no other person shall be entitled to vote in such elections.

## ARTICLE THE FOURTH.

Notaries public shall be appointed by the governor, in the same manner as judicial officers are appointed, and shall hold their offices during seven years, unless sooner removed by the governor, with the consent of the council, upon the address of both houses of the Legislature.

In case the office of secretary or treasurer of the Commonwealth shall become vacant from any cause during the recess of the General Court, the governor, with the advice and consent of the council, shall nominate and appoint, under such regulations as may be prescribed by law, a competent and suitable person to such vacant office, who shall hold the same, until a successor shall be appointed by the General Court.

Whenever the exigencies of the Commonwealth shall require the appointment of a commissary general, he shall be nominated, appointed and commissioned in such manner as the Legislature may by law prescribe.

All officers commissioned to command in the militia, may be removed from office in such manner as the Legislature may, by law, prescribe.

## ARTICLE THE FIFTH.

In the elections of captains and subalterns of the militia, all the members of their respective companies, as well those under, as those above the age of twenty-one years, shall have a right to vote.

## ARTICLE THE SIXTH.

Instead of the oath of allegiance prescribed by the Constitution, the following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military, under the government of this Commonwealth, before he shall enter upon the duties of his office, to wit :

"I, A. B., do solemnly swear that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the constitution thereof. *So help me God.*"

Provided, that when any person shall be of the denomination called Quakers, and shall decline taking said oath, he shall make his affirmation in the foregoing form, omitting the word "swear" and inserting instead thereof the word "affirm," and omitting the words "So help me God," and subjoining instead thereof, the words, "This I do, under the pains and penalties of perjury."

## ARTICLE THE SEVENTH.

No oath, declaration or subscription, excepting the oath prescribed in the preceding article, and the oath of office, shall be required of the governor, lieutenant governor, counsellors, senators or representatives, to qualify them to perform the duties of their respective offices.

## ARTICLE THE EIGHTH.

No judge of any court in this Commonwealth, (except the court



of sessions) and no person holding any office under the authority of the United States, (postmasters excepted) shall at the same time hold the office of governor, lieutenant governor or counsellor, or have a seat in the senate or house of representatives of this Commonwealth; and no judge of any court in this Commonwealth, (except the court of sessions) nor the attorney general, solicitor general, county attorney, clerk of any court, sheriff, treasurer and receiver general, register of probate, nor register of deeds, shall continue to hold his said office after being elected a member of the Congress of the United States and accepting that trust; but the acceptance of such trust, by any of the officers aforesaid, shall be deemed and taken to be a resignation of his said office; and judges of the courts of common pleas shall hold no other office under the government of this Commonwealth, the office of justice of the peace and militia offices excepted.

#### ARTICLE THE NINTH.

If at any time hereafter any specific and particular amendment or amendments to the constitution be proposed in the General Court, and agreed to by a majority of the senators and two thirds of the members of the house of representatives present and voting thereon; such proposed amendment or amendments shall be entered on the journals of the two houses, with the yeas and nays taken thereon, and referred to the General Court then next to be chosen, and shall be published; and if, in the General Court next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of the senators and two thirds of the members of the house of representatives present and voting thereon, then it shall be the duty of the General Court to submit such proposed amendment or amendments to the people, and if they shall be approved and ratified by a majority of the qualified voters voting thereon, at meetings legally warned and holden for that purpose, they shall become part of the constitution of this Commonwealth.

*Resolved*, That the above recited articles of amendment shall be enrolled on parchment, and deposited in the secretary's office as a part of the constitution and fundamental laws of this Commonwealth, and published in immediate connection therewith, in all future editions of the laws of this Commonwealth, printed by public authority. And in order that the said amendments may be promulgated and made known to the people of this Commonwealth without delay, it is further

*Resolved*, That his excellency the governor be, and he hereby is authorized and requested to issue his proclamation, reciting the articles aforesaid; announcing that the same have been duly adopted and ratified by the people of this Commonwealth, and become a part of the constitution thereof; and requiring all magistrates, officers civil and military, and all the citizens of this Commonwealth, to take notice thereof and govern themselves accordingly."

And accordingly, his excellency Governor Brooks issued his proclamation promulgating the amendments, as follows:

COMMONWEALTH OF MASSACHUSETTS.

*By his Excellency JOHN BROOKS, Governor of the Commonwealth of Massachusetts.*

A P R O C L A M A T I O N

For promulgating the Amendments to the Constitution.

WHEREAS sundry resolutions passed the Legislature on the fifth day of June, in the year of our Lord one thousand eight hundred and twenty-one, in the words following, viz.:

[The resolves of the Legislature, with the adopted amendments, are here cited in the proclamation.]

Now, therefore, I, JOHN BROOKS, Governor of the Commonwealth of Massachusetts, by virtue of the authority to me given by the resolution last above written, do issue this, my proclamation, and I do hereby announce, that the several articles aforesaid have been duly ratified and adopted by the people of this Commonwealth, and have become a part of the constitution thereof. And all magistrates, officers, civil and military, and all the citizens of the Commonwealth, are required to take notice thereof and govern themselves accordingly.

Given at the council chamber at Boston, the day and year first above written, and in the forty-fifth year of the independence of the United States.

JOHN BROOKS.

By his Excellency the Governor.

ALDEN BRADFORD, *Secretary.*

*God save the Commonwealth of Massachusetts!*

## CONSTITUTION OF MASSACHUSETTS.

---

### PREAMBLE.

The end of the institution, maintenance and administration of government, is to secure the existence of the body politic ; to protect it ; and to furnish the individuals who compose it with the power of enjoying, in safety and tranquillity, their natural rights and the blessings of life : and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

The body politic is formed by a voluntary association of individuals ; it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them ; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the great Legislator of the universe in affording us, in the course of his providence, an opportunity, deliberately and peaceably, without fraud, violence or surprise, of entering into an original, explicit, and solemn compact with each other ; and of forming a new constitution of civil government, for ourselves and posterity ; and devoutly imploring his direction in so interesting a design, do agree upon, ordain and establish, the following *Declaration of Rights, and Frame of Government*, as the CONSTITUTION of the COMMONWEALTH of MASSACHUSETTS.

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### PART THE FIRST.

#### *A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts.*

ART. I. All men are born free and equal, and have certain natural, essential, and inalienable rights ; among which may be reckoned the right of enjoying and defending their lives and liberties ; that of acquiring, possessing and protecting property ; in fine, that of seeking and obtaining their safety and happiness.

II. It is the right as well as the duty of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING, the great creator and preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for

worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

III. As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion and morality; and as these cannot be generally diffused through a community, but by the institution of the public worship of God, and of public instructions in piety, religion and morality: therefore, to promote their happiness, and to secure the good order and preservation of their government, the people of this Commonwealth have a right to invest their Legislature with power to authorize and require, and the Legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of God, and for the support and maintenance of public protestant teachers of piety, religion and morality, in all cases where such provision shall not be made voluntarily.

And the people of this Commonwealth have also a right to, and do, invest their Legislature with authority to enjoin upon all the subjects an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

Provided, notwithstanding, that the several towns, parishes, precincts, and other bodies politic, or religious societies, shall, at all times, have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance.

And all moneys, paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends: otherwise it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said moneys are raised.

And every denomination of Christians, demeaning themselves peaceably, and as good subjects of the Commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law.

IV. The people of this Commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter, be by them expressly delegated to the United States of America, in congress assembled.

V. All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested

with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

VI. No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by blood, the idea of a man being born a magistrate, lawgiver, or judge, is absurd and unnatural.

VII. Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family or class of men: therefore the people alone have an incontestible, inalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

VIII. In order to prevent those, who are vested with authority, from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

IX. All elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.

X. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary; but no part of the property of any individual, can, with justice, be taken from him or applied to public uses without his own consent, or that of the representative body of the people. In fine, the people of this Commonwealth are not controllable by any other laws, than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

XI. Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly and without delay; conformably to the laws.

XII. No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself: and every subject shall have a right to produce all

proofs, that may be favorable to him ; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his counsel at his election ; and no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.

And the Legislature shall not make any law that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

XIII. In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.

XIV. Every subject has a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation ; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure ; and no warrant ought to be issued but in cases, and with the formalities, prescribed by the laws.

XV. In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherwise used and practised, the parties have a right to a trial by jury ; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the Legislature shall hereafter find it necessary to alter it.

XVI. The liberty of the press is essential to the security of freedom in a state : it ought not, therefore, to be restrained in this Commonwealth.

XVII. The people have a right to keep and to bear arms for the common defence : and as, in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the Legislature ; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it.

XVIII. A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives : and they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the Commonwealth.

XIX. The people have a right, in an orderly and peaceable

manner, to assemble to consult upon the common good; give instructions to their representatives; and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

XX. The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the Legislature, or by authority derived from it, to be exercised in such particular cases only as the Legislature shall expressly provide for.

XXI. The freedom of deliberation, speech and debate, in either house of the Legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.

XXII. The Legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening, and confirming the laws, and for making new laws, as the common good may require.

XXIII. No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the Legislature.

XXIV. Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

XXV. No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the Legislature.

XXVI. No magistrate or court of law shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

XXVII. In time of peace, no soldier ought to be quartered in any house without the consent of the owner; and in time of war, such quarters ought not to be made but by the civil magistrate, in a manner ordained by the Legislature.

XXVIII. No person can in any case be subjected to law-martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the Legislature.

XXIX. It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent, as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws.

XXX. In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial

powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

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## PART THE SECOND.

### *The Frame of Government.*

The people, inhabiting the territory formerly called the Province of Massachusetts Bay, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign, and independent body politic or state, by the name of **THE COMMONWEALTH OF MASSACHUSETTS.**

## CHAPTER I.

### THE LEGISLATIVE POWER.

#### SECTION I.

##### *The General Court.*

ART. I. The department of legislation shall be formed by two branches, a Senate and House of Representatives: each of which shall have a negative on the other.

The legislative body shall assemble every year, on the last Wednesday in May, and at such other times as they shall judge necessary; and shall dissolve and be dissolved on the day next preceding the said last Wednesday in May; and shall be styled **THE GENERAL COURT OF MASSACHUSETTS.**

II. No bill or resolve of the senate or house of representatives shall become a law, and have force as such, until it shall have been laid before the governor for his revisal: and if he, upon such revision, approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the senate or house of representatives, in whichsoever the same shall have originated; who shall enter the objections sent down by the governor, at large, on their records, and proceed to reconsider the said bill or resolve: but if, after such reconsideration, two thirds of the said senate or house of representatives shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the Legislature, where it shall also be reconsidered, and if approved by two thirds of the members present, shall have the force of a law: but in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for, or against, the said bill or resolve, shall be entered upon the public records of the Commonwealth.

And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the governor, within five days after it shall have been presented, the same shall have the force of a law.



III. The General Court shall forever have full power and authority to erect and constitute judicatories and courts of record, or other courts, to be held in the name of the Commonwealth, for the hearing, trying, and determining of all manner of crimes, offences, pleas, processes, plaints, actions, matters, causes and things, whatsoever, arising or happening within the Commonwealth, or between or concerning persons inhabiting, or residing, or brought within the same; whether the same be criminal or civil, or whether the said crimes be capital or not capital, and whether the said pleas be real, personal, or mixt; and for the awarding and making out of execution thereupon: to which courts and judicatories are hereby given and granted full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy, or depending before them.

IV. And further, full power and authority are hereby given and granted to the said General Court, from time to time, to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof; and to name and settle annually, or provide by fixed laws for the naming and settling, all civil officers within the said Commonwealth, the election and constitution of whom are not hereafter in this form of government otherwise provided for; and to set forth the several duties, powers and limits, of the several civil and military officers of this Commonwealth, and the forms of such oaths or affirmations as shall be respectively administered unto them for the execution of their several offices and places, so as the same be not repugnant or contrary to this constitution; and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said Commonwealth; and also to impose and levy reasonable duties and excises, upon any produce, goods, wares, merchandise, and commodities whatsoever, brought into, produced, manufactured, or being within the same; to be issued and disposed of by warrant, under the hand of the governor of this Commonwealth for the time being, with the advice and consent of the council, for the public service, in the necessary defence and support of the government of the said Commonwealth, and the protection and preservation of the subjects thereof, according to such acts as are or shall be in force within the same.

And while the public charges of government, or any part thereof, shall be assessed on polls and estates, in the manner that has hitherto been practised, in order that such assessments may be made with equality, there shall be a valuation of estates within the Commonwealth taken anew once in every ten years at least, and as much oftener as the General Court shall order.

## CHAPTER I.

## SECTION II.

*Senate.*

ART I. There shall be annually elected, by the freeholders and other inhabitants of this Commonwealth, qualified as in this constitution is provided, forty persons to be counsellors and senators for the year ensuing their election; to be chosen by the inhabitants of the districts, into which the Commonwealth may, from time to time, be divided by the General Court for that purpose: and the General Court, in assigning the numbers to be elected by the respective districts, shall govern themselves by the proportion of the public taxes paid by the said districts; and timely make known to the inhabitants of the Commonwealth, the limits of each district, and the number of counsellors and senators to be chosen therein; provided, that the number of such districts shall never be less than thirteen; and that no district be so large as to entitle the same to choose more than six senators.

And the several counties in this Commonwealth shall, until the General Court shall determine it necessary to alter the said districts, be districts for the choice of counsellors and senators, (except that the counties of Dukes county and Nantucket shall form one district for that purpose) and shall elect the following number for counsellors and senators, viz.:

|             |        |                  |        |
|-------------|--------|------------------|--------|
| Suffolk,    | six.   | York,            | two.   |
| Essex,      | six.   | Dukes county and | } one. |
| Middlesex,  | five.  | Nantucket,       |        |
| Hampshire,  | four.  | Worcester,       | five.  |
| Plymouth,   | three. | Cumberland,      | one.   |
| Barnstable, | one.   | Lincoln,         | one.   |
| Bristol,    | three. | Berkshire,       | two.   |

II. The senate shall be the first branch of the Legislature; and the senators shall be chosen in the following manner, viz.: there shall be a meeting on the first Monday in April annually, forever, of the inhabitants of each town in the several counties of this Commonwealth, to be called by the selectmen, and warned in due course of law, at least seven days before the first Monday in April, for the purpose of electing persons to be senators and counsellors; and at such meetings every male inhabitant of twenty-one years of age and upwards, having a freehold estate, within this Commonwealth, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to give in his vote for the senators for the district of which he is an inhabitant. And to remove all doubts concerning the meaning of the word "inhabitant," in this constitution, every person shall be considered as an inhabitant, for the purpose of electing and being elected into any office, or place within this State, in that town, district, or plantation, where he dwelleth, or hath his home.

The selectmen of the several towns shall preside at such meet-

ings impartially; and shall receive the votes of all the inhabitants of such towns present and qualified to vote for senators, and shall sort and count them in open town meeting, and in presence of the town clerk, who shall make a fair record, in presence of the selectmen, and in open town meeting, of the name of every person voted for, and of the number of votes against his name; and a fair copy of this record shall be attested by the selectmen and the town clerk, and shall be sealed up, directed to the secretary of the Commonwealth for the time being, with a superscription, expressing the purport of the contents thereof, and delivered by the town clerk of such towns, to the sheriff of the county in which such town lies, thirty days at least before the last Wednesday in May annually; or it shall be delivered into the secretary's office seventeen days at least before the said last Wednesday in May; and the sheriff of each county shall deliver all such certificates, by him received, into the secretary's office, seventeen days before the said last Wednesday in May.

And the inhabitants of plantations unincorporated, qualified as this constitution provides, who are or shall be empowered and required to assess taxes upon themselves toward the support of government, shall have the same privilege of voting for counsellors and senators, in the plantations where they reside, as town inhabitants have in their respective towns; and the plantation meetings for that purpose shall be held annually on the same first Monday in April, at such place in the plantations respectively as the assessors thereof shall direct; which assessors shall have like authority for notifying the electors, collecting and returning the votes, as the selectmen and town clerks have in their several towns, by this constitution. And all other persons living in places unincorporated, (qualified as aforesaid) who shall be assessed to the support of government by the assessors of an adjacent town, shall have the privilege of giving in their votes for counsellors and senators, in the town where they shall be assessed, and be notified of the place of meeting by the selectmen of the town where they shall be assessed, for that purpose, accordingly.

III. And that there may be a due convention of senators on the last Wednesday in May annually, the governor, with five of the council for the time being, shall, as soon as may be, examine the returned copies of such records; and fourteen days before the said day, he shall issue his summons to such persons as shall appear to be chosen by a majority of voters, to attend on that day, and take their seats accordingly: provided, nevertheless, that for the first year, the said returned copies shall be examined by the president and five of the council of the former constitution of government; and the said president shall, in like manner, issue his summons to the persons so elected, that they may take their seats as aforesaid.

IV. The senate shall be the final judge of the elections, returns, and qualifications of their own members, as pointed out in the constitution; and shall, on the said last Wednesday in May annually, determine and declare who are elected by each district, to be sena-

tors, by a majority of votes: and in case there shall not appear to be the full number of senators returned elected by a majority of votes for any district, the deficiency shall be supplied in the following manner, viz.: The members of the house of representatives, and such senators as shall be declared elected, shall take the names of such persons as shall be found to have the highest number of votes in such district, and not elected, amounting to twice the number of senators wanting, if there be so many voted for; and, out of these, shall elect by ballot a number of senators sufficient to fill up the vacancies in such district; and in this manner all such vacancies shall be filled up in every district of the Commonwealth; and in like manner all vacancies in the senate, arising by death, removal out of the State, or otherwise, shall be supplied as soon as may be after such vacancies shall happen.

V. Provided, nevertheless, that no person shall be capable of being elected as a senator, who is not seized in his own right of a freehold within this Commonwealth, of the value of three hundred pounds at least, or possessed of personal estate to the value of six hundred pounds at least, or of both to the amount of the same sum, and who has not been an inhabitant of this Commonwealth, for the space of five years immediately preceding his election, and, at the time of his election, he shall be an inhabitant in the district for which he shall be chosen.

VI. The senate shall have power to adjourn themselves, provided such adjournments do not exceed two days at a time.

VII. The senate shall choose its own president, appoint its own officers, and determine its own rule of proceeding.

VIII. The senate shall be a court with full authority to hear and determine all impeachments made by the house of representatives against any officer or officers of the Commonwealth, for misconduct and mal-administration in their offices; but, previous to the trial of every impeachment, the members of the senate shall respectively be sworn truly and impartially to try and determine the charge in question, according to the evidence. Their judgment, however, shall not extend further than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit, under this Commonwealth: but the party, so convicted, shall be, nevertheless, liable to indictment, trial, judgment and punishment, according to the laws of the land.

IX. Not less than sixteen members of the senate shall constitute a quorum for doing business.

## CHAPTER I.

### SECTION III.

#### *House of Representatives.*

ARTICLE I. There shall be, in the Legislature of this Commonwealth, a representation of the people, annually elected, and founded upon the principle of equality.

II. And in order to provide for a representation of the citizens of this Commonwealth founded upon the principle of equality, every corporate town, containing one hundred and fifty ratable polls, may elect one representative; every corporate town, containing three hundred and seventy-five ratable polls, may elect two representatives; every corporate town, containing six hundred ratable polls, may elect three representatives; and proceeding in that manner, making two hundred and twenty-five ratable polls the mean increasing number for every additional representative.

Provided, nevertheless, that each town now incorporated, not having one hundred and fifty ratable polls, may elect one representative; but no place shall hereafter be incorporated with the privilege of electing a representative, unless there are within the same one hundred and fifty ratable polls.

And the house of representatives shall have power, from time to time, to impose fines upon such towns as shall neglect to choose and return members to the same, agreeably to this constitution.

The expenses of travelling to the General Assembly, and returning home, once in every session, and no more, shall be paid by the government, out of the public treasury, to every member who shall attend as seasonably as he can in the judgment of the house, and does not depart without leave.

III. Every member of the house of representatives shall be chosen by written votes; and, for one year at least next preceding his election, shall have been an inhabitant of, and have been seized in his own right of, a freehold of the value of one hundred pounds, within the town he shall be chosen to represent, or any ratable estate to the value of two hundred pounds; and he shall cease to represent the said town, immediately on his ceasing to be qualified as aforesaid.

IV. Every male person, being twenty-one years of age, and resident in any particular town in this Commonwealth for the space of one year next preceding, having a freehold estate within the same town of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to vote in the choice of a representative or representatives for the said town.

V. The members of the house of representatives shall be chosen annually in the month of May, ten days at least before the last Wednesday of that month.

VI. The house of representatives shall be the grand inquest of this Commonwealth; and all impeachments made by them shall be heard and tried by the senate.

VII. All money bills shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

VIII. The house of representatives shall have power to adjourn themselves; provided such adjournment shall not exceed two days at a time.

IX. Not less than sixty members of the house of representatives shall constitute a quorum for doing business.

X. The house of representatives shall be judge of the returns, elections, and qualifications of its own members, as pointed out in the constitution; shall choose their own speaker; appoint their own officers, and settle the rules and orders of proceeding in their own house. They shall have authority to punish by imprisonment, every person, not a member, who shall be guilty of disrespect to the house, by any disorderly, or contemptuous behavior, in its presence; or who, in the town where the General Court is sitting, and during the time of its sitting, shall threaten harm to the body or estate of any of its members, for anything said or done in the house; or who shall assault any of them therefor; or who shall assault, or arrest, any witness, or other person ordered to attend the house, in his way in going, or returning; or who shall rescue any person arrested by the order of the house.

And no member of the house of representatives shall be arrested, or held to bail on mesne process, during his going unto, returning from, or his attending, the General Assembly.

XI. The senate shall have the same powers in the like cases; and the governor and council shall have the same authority to punish in like cases: provided, that no imprisonment, on the warrant or order of the governor, council, senate, or house of representatives, for either of the above described offences, be for a term exceeding thirty days.

And the senate and house of representatives may try, and determine, all cases where their rights and privileges are concerned, and which, by the constitution, they have authority to try and determine, by committees of their own members, or in such other way as they may respectively think best.

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## CHAPTER II.

### EXECUTIVE POWER.

#### SECTION I.

##### *Governor.*

ART. I. There shall be a supreme executive magistrate, who shall be styled, THE GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS; and whose title shall be—HIS EXCELLENCY.

II. The governor shall be chosen annually; and no person shall be eligible to this office, unless, at the time of his election, he shall have been an inhabitant of this Commonwealth for seven years next preceding; and unless he shall, at the same time, be seized, in his own right, of a freehold within the Commonwealth of the value of one thousand pounds; and unless he shall declare himself to be of the Christian religion.

III. Those persons, who shall be qualified to vote for senators and representatives, within the several towns of this Commonwealth, shall, at a meeting to be called for that purpose, on the first Monday of April annually, give in their votes for a governor,

to the selectmen, who shall preside at such meetings; and the town clerk, in the presence and with the assistance of the selectmen, shall, in open town meeting, sort and count the votes, and form a list of the persons voted for, with the number of votes for each person against his name; and shall make a fair record of the same in the town books, and a public declaration thereof in the said meeting; and shall, in the presence of the inhabitants, seal up copies of the said list, attested by him and the selectmen, and transmit the same to the sheriff of the county, thirty days at least before the last Wednesday in May; and the sheriff shall transmit the same to the secretary's office seventeen days at least before the said last Wednesday in May; or the selectmen may cause returns of the same to be made to the office of the secretary of the Commonwealth seventeen days at least before the said day; and the secretary shall lay the same before the senate and the house of representatives, on the last Wednesday in May, to be by them examined; and in case of an election by a majority of all the votes returned, the choice shall be by them declared and published; but if no person shall have a majority of votes, the house of representatives shall, by ballot, elect two out of four persons, who had the highest number of votes, if so many shall have been voted for; but, if otherwise, out of the number voted for; and make return to the senate of the two persons so elected; on which, the senate shall proceed, by ballot, to elect one, who shall be declared governor.

IV. The governor shall have authority, from time to time, at his discretion, to assemble and call together the counsellors of this Commonwealth for the time being; and the governor, with the said counsellors, or five of them at least, shall, and may, from time to time, hold and keep a council, for the ordering and directing the affairs of the Commonwealth, agreeably to the constitution and the laws of the land.

V. The governor, with advice of council, shall have full power and authority, during the session of the General Court, to adjourn or prorogue the same to any time the two houses shall desire; and to dissolve the same on the day next preceding the last Wednesday in May; and, in the recess of the said court, to prorogue the same from time to time, not exceeding ninety days in any one recess; and to call it together sooner than the time to which it may be adjourned or prorogued, if the welfare of the Commonwealth shall require the same; and in case of any infectious distemper prevailing in the place where the said court is next at any time to convene, or any other cause happening whereby danger may arise to the health or lives of the members from their attendance, he may direct the session to be held at some other the most convenient place within the State.

And the governor shall dissolve the said General Court on the day next preceding the last Wednesday in May.

VI. In cases of disagreement between the two houses, with regard to the necessity, expediency or time of adjournment, or pro-

rogation, the governor, with advice of the council, shall have a right to adjourn or prorogue the General Court, not exceeding ninety days, as he shall determine the public good shall require.

VII. The governor of this Commonwealth, for the time being, shall be the commander in chief of the army and navy, and of all the military forces of the State, by sea and land; and shall have full power, by himself, or by any commander, or other officer or officers, from time to time, to train, instruct, exercise and govern the militia and navy; and, for the special defence and safety of the Commonwealth, to assemble in martial array, and put in warlike posture, the inhabitants thereof, and to lead and conduct them, and with them, to encounter, repel, resist, expel and pursue, by force of arms, as well by sea as by land, within or without the limits of this Commonwealth, and also to kill, slay and destroy, if necessary, and conquer, by all fitting ways, enterprises and means whatsoever, all and every such person and persons as shall, at any time hereafter, in a hostile manner, attempt or enterprise the destruction, invasion, detriment, or annoyance of this Commonwealth; and to use and exercise, over the army and navy, and over the militia in actual service, the law martial, in time of war or invasion, and also in time of rebellion, declared by the Legislature to exist, as occasion shall necessarily require; and to take and surprise by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition and other goods, as shall in a hostile manner invade, or attempt the invading, conquering, or annoying this Commonwealth; and that the governor be intrusted with all these and other powers, incident to the offices of captain general and commander in chief, and admiral, to be exercised agreeably to the rules and regulations of the constitution, and the laws of the land, and not otherwise.

Provided, that the said governor shall not, at any time hereafter, by virtue of any power by this constitution granted, or hereafter to be granted to him by the Legislature, transport any of the inhabitants of this Commonwealth, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the General Court; except so far as may be necessary to march or transport them by land or water, for the defence of such part of the State to which they cannot otherwise conveniently have access.

VIII. The power of pardoning offences, except such as persons may be convicted of before the senate, by an impeachment of the house, shall be in the governor, by and with the advice of council; but no charter of pardon, granted by the governor with advice of the council, before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence, or offences intended to be pardoned.

IX. All judicial officers, the attorney general, the solicitor general, all sheriffs, coroners, and registers of probate, shall be nom-



inated and appointed by the governor, by and with the advice and consent of the council; and every such nomination shall be made by the governor, and made at least seven days prior to such appointment.

X. The captains and subalterns of the militia shall be elected by the written votes of the train band and alarm list of their respective companies, of twenty-one years of age and upwards; the field officers of regiments shall be elected by the written votes of the captains and subalterns of their respective regiments; the brigadiers shall be elected in like manner, by the field officers of their respective brigades; and such officers, so elected, shall be commissioned by the governor, who shall determine their rank.

The Legislature shall, by standing laws, direct the time and manner of convening the electors, and of collecting votes, and of certifying to the governor the officers elected.

The major generals shall be appointed by the senate and house of representatives, each having a negative upon the other; and be commissioned by the governor.

And if the electors of brigadiers, field officers, captains or subalterns, shall neglect or refuse to make such elections, after being duly notified, according to the laws for the time being, then the governor, with advice of council, shall appoint suitable persons to fill such offices.

And no officer, duly commissioned to command in the militia, shall be removed from his office, but by the address of both houses to the governor, or by fair trial in court martial, pursuant to the laws of the Commonwealth for the time being.

The commanding officers of regiments shall appoint their adjutants and quarter masters; the brigadiers their brigade majors; and the major generals their aids; and the governor shall appoint the adjutant general.

The governor, with advice of council, shall appoint all officers of the continental army, whom by the confederation of the United States it is provided that this Commonwealth shall appoint,—as also all officers of forts and garrisons.

The divisions of the militia into brigades, regiments and companies, made in pursuance of the militia laws now in force, shall be considered as the proper divisions of the militia of this Commonwealth until the same shall be altered in pursuance of some future law.

XI. No moneys shall be issued out of the treasury of this Commonwealth and disposed of (except such sums as may be appropriated for the redemption of bills of credit or treasurer's notes, or for the payment of interest arising thereon) but by warrant under the hand of the governor for the time being, with the advice and consent of the council, for the necessary defence and support of the Commonwealth; and for the protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the General Court.

**XII.** All public boards, the commissary general, all superintending officers of public magazines and stores, belonging to this Commonwealth, and all commanding officers of forts and garrisons within the same, shall, once in every three months, officially and without requisition, and at other times when required by the governor, deliver to him an account of all goods, stores, provisions, ammunition, cannon with their appendages, and small arms with their accoutrements, and of all other public property whatever under their care respectively; distinguishing the quantity, number, quality and kind of each, as particularly as may be; together with the condition of such forts and garrisons; and the said commanding officer shall exhibit to the governor, when required by him, true and exact plans of such forts, and of the land and sea, or harbor or harbors, adjacent.

And the said boards, and all public officers, shall communicate to the governor, as soon as may be after receiving the same, all letters, dispatches, and intelligences of a public nature, which shall be directed to them respectively.

**XIII.** As the public good requires that the governor should not be under the undue influence of any of the members of the General Court, by a dependence on them for his support—that he should, in all cases, act with freedom for the benefit of the public—that he should not have his attention necessarily diverted from that object to his private concerns—and that he should maintain the dignity of the Commonwealth in the character of its chief magistrate—it is necessary that he should have an honorable stated salary, of a fixed and permanent value, amply sufficient for those purposes, and established by standing laws: and it shall be among the first acts of the General Court, after the commencement of this constitution, to establish such salary by law accordingly.

Permanent and honorable salaries shall also be established by law for the justices of the supreme judicial court.

And if it shall be found, that any of the salaries aforesaid, so established, are insufficient, they shall, from time to time, be enlarged, as the General Court shall judge proper.

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## CHAPTER II.

### SECTION II.

#### *Lieutenant Governor.*

**ART. I.** There shall be annually elected a lieutenant governor of the Commonwealth of Massachusetts, whose title shall be His Honor—and who shall be qualified, in point of religion, property, and residence in the Commonwealth, in the same manner with the governor; and the day and manner of his election, and the qualifications of the electors, shall be the same as are required in the election of a governor. The return of the votes for this officer, and the declaration of his election, shall be in the same manner;

and if no one person shall be found to have a majority of all the votes returned, the vacancy shall be filled by the senate and house of representatives, in the same manner as the governor is to be elected, in case no one person shall have a majority of the votes of the people to be governor.

II. The governor, and in his absence the lieutenant governor, shall be president of the council, but shall have no vote in council; and the lieutenant governor shall always be a member of the council, except when the chair of the governor shall be vacant.

III. Whenever the chair of the governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the lieutenant governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the governor, and shall have and exercise all the powers and authorities, which by this constitution the governor is vested with, when personally present.

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## CHAPTER II.

### SECTION III.

#### *Council, and the manner of settling elections by the Legislature.*

ART. I. There shall be a council for advising the governor in the executive part of the government, to consist of nine persons besides the lieutenant governor, whom the governor for the time being shall have full power and authority, from time to time, at his discretion, to assemble and call together; and the governor, with the said counsellors, or five of them at least, shall and may, from time to time, hold and keep a council, for the ordering and directing the affairs of the Commonwealth, according to the laws of the land.

II. Nine counsellors shall be annually chosen from among the persons returned for counsellors and senators, on the last Wednesday in May, by the joint ballot of the senators and representatives assembled in one room; and in case there shall not be found, upon the first choice, the whole number of nine persons who will accept a seat in the council, the deficiency shall be made up by the electors aforesaid from among the people at large; and the number of senators left shall constitute the senate for the year. The seats of the persons thus elected from the senate, and accepting the trust, shall be vacated in the senate.

III. The counsellors, in the civil arrangements of the Commonwealth, shall have rank next after the lieutenant governor.

IV. Not more than two counsellors shall be chosen out of any one district of this Commonwealth.

V. The resolutions and advice of the council shall be recorded in a register, and signed by the members present; and this record may be called for at any time by either house of the Legislature; and any member of the council may insert his opinion contrary to the resolution of the majority.

VI. Whenever the office of the governor and lieutenant governor shall be vacant, by reason of death, absence, or otherwise, then the council, or the major part of them, shall, during such vacancy, have full power and authority to do, and execute, all and every such acts, matters and things, as the governor or the lieutenant governor might or could, by virtue of this constitution, do or execute, if they, or either of them, were personally present.

VII. And whereas the elections appointed to be made by this constitution, on the last Wednesday in May annually, by the two houses of the Legislature, may not be completed on that day, the said elections may be adjourned from day to day until the same shall be completed: And the order of elections shall be as follows: the vacancies in the senate, if any, shall first be filled up; the governor and lieutenant governor shall then be elected, provided there should be no choice of them by the people; and afterwards the two houses shall proceed to the election of the council.

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## CHAPTER II.

### SECTION IV.

#### *Secretary, Treasurer, Commissary, &c.*

ART. I. The secretary, treasurer and receiver general, and the commissary general, notaries public, and naval officers, shall be chosen annually by joint ballot of the senators and representatives in one room; and, that the citizens of this Commonwealth may be assured, from time to time, that the moneys remaining in the public treasury, upon the settlement and liquidation of the public accounts, are their property, no man shall be eligible as treasurer and receiver general more than five years successively.

II. The records of the Commonwealth shall be kept in the office of the secretary, who may appoint his deputies, for whose conduct he shall be accountable, and he shall attend the governor and council, the senate and house of representatives, in person, or by his deputies, as they shall respectively require.

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## CHAPTER III.

### JUDICIARY POWER.

ART. I. The tenure, that all commission officers shall by law have in their offices, shall be expressed in their respective commissions. All judicial officers, duly appointed, commissioned and sworn, shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this constitution: provided, nevertheless, the governor, with consent of the council, may remove them upon the address of both houses of the Legislature.

II. Each branch of the Legislature, as well as the governor and council, shall have authority to require the opinions of the justices

of the supreme judicial court, upon important questions of law, and upon solemn occasions:

III. In order that the people may not suffer from the long continuance in place of any justice of the peace, who shall fail of discharging the important duties of his office with ability or fidelity, all commissions of justices of the peace shall expire and become void, in the term of seven years from their respective dates; and, upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well being of the Commonwealth.

IV. The judges of probate of wills, and for granting letters of administration, shall hold their courts at such place or places, on fixed days, as the convenience of the people shall require; and the Legislature shall, from time to time hereafter, appoint such times and places; until such appointments, the said courts shall be holden at the times and places which the respective judges shall direct.

V. All causes of marriage, divorce and alimony, and all appeals from the judges of probate, shall be heard and determined by the governor and council, until the Legislature shall, by law, make other provision.

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## CHAPTER IV.

### DELEGATES TO CONGRESS.

The delegates of this Commonwealth to the Congress of the United States shall, sometime in the month of June annually, be elected by the joint ballot of the senate and house of representatives, assembled together in one room; to serve in Congress for one year, to commence on the first Monday in November then next ensuing. They shall have commissions under the hand of the governor, and the great seal of the Commonwealth; but may be recalled at any time within the year, and others chosen and commissioned, in the same manner, in their stead.

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## CHAPTER V.

### THE UNIVERSITY AT CAMBRIDGE, AND ENCOURAGEMENT OF LITERATURE, ETC.

#### SECTION I.

#### *The University.*

ART. I. Whereas our wise and pious ancestors, so early as the year one thousand six hundred and thirty-six, laid the foundation of Harvard College, in which university many persons of great eminence have, by the blessing of God, been initiated in those arts and sciences which qualified them for public employments, both in church and state; and whereas the encouragement of arts and sciences, and all good literature, tends to the honor of God, the advantage of the Christian religion, and the great benefit of this, and the other United States of America—it is declared, that the PRESI-

**DENT AND FELLOWS OF HARVARD COLLEGE**, in their corporate capacity, and their successors in that capacity, their officers and servants, shall have, hold, use, exercise and enjoy, all the powers, authorities, rights, liberties, privileges, immunities and franchises, which they now have, or are entitled to have, hold, use, exercise and enjoy; and the same are hereby ratified and confirmed unto them, the said President and Fellows of Harvard College, and to their successors, and to their officers and servants, respectively, forever.

II. And whereas there have been, at sundry times, by divers persons, gifts, grants, devises of houses, lands, tenements, goods, chattels, legacies and conveyances, heretofore made, either to Harvard College in Cambridge, in New England, or to the President and Fellows of Harvard College, or to the said College, by some other description, under several charters successively; it is declared, that all the said gifts, grants, devises, legacies and conveyances, are hereby forever confirmed unto the President and Fellows of Harvard College, and to their successors, in the capacity aforesaid, according to the true intent and meaning of the donor or donors, grantor or grantors, devisor or devisors.

III. And whereas by an act of the General Court of the Colony of Massachusetts Bay, passed in the year one thousand six hundred and forty-two, the governor and deputy governor, for the time being, and all the magistrates of that jurisdiction, were, with the President, and a number of the clergy in the said act described, constituted the Overseers of Harvard College; and it being necessary, in this new constitution of government, to ascertain who shall be deemed successors to the said governor, deputy governor, and magistrates; it is declared, that the governor, lieutenant governor, council and senate of this Commonwealth, are, and shall be deemed, their successors; who, with the President of Harvard College, for the time being, together with the ministers of the Congregational churches in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, mentioned in the said act, shall be, and hereby are, vested with all the powers and authority belonging, or in any way appertaining to the Overseers of Harvard College; provided, that nothing herein shall be construed to prevent the Legislature of this Commonwealth from making such alterations in the government of the said University, as shall be conducive to its advantage, and the interest of the republic of letters, in as full a manner as might have been done by the Legislature of the late Province of the Massachusetts Bay.

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## CHAPTER V.

### SECTION II.

#### *The Encouragement of Literature, &c.*

Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the

opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the University at Cambridge, public schools, and grammar schools in the towns; to encourage private societies, and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments among the people.

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## CHAPTER VI.

OATHS AND SUBSCRIPTIONS; INCOMPATIBILITY OF AND EXCLUSION FROM OFFICES; PECUNIARY QUALIFICATIONS; COMMISSIONS; WRITS; CONFIRMATION OF LAWS; HABEAS CORPUS; THE ENACTING STYLE; CONTINUANCE OF OFFICERS; PROVISION FOR A FUTURE REVISAL OF THE CONSTITUTION, ETC.

ART. I. Any person chosen governor, lieutenant governor, counsellor, senator, or representative, and accepting the trust, shall, before he proceed to execute the duties of his place or office, make and subscribe the following declaration, viz.:

"I, A. B. do declare, that I believe the Christian religion, and have a firm persuasion of its truth; and that I am seized and possessed, in my own right, of the property required by the constitution, as one qualification for the office or place to which I am elected."

And the governor, lieutenant governor, and counsellors, shall make and subscribe the said declaration, in the presence of the two houses of assembly; and the senators and representatives, first elected under this constitution, before the president and five of the council of the former constitution, and, forever afterwards, before the governor and council for the time being.

And every person, chosen to either of the places or offices aforesaid, as also any person appointed or commissioned to any judicial, executive, military, or other office under the government, shall, before he enters on the discharge of the business of his place or office, take and subscribe the following declaration, and oaths or affirmations, viz.:

"I, A. B. do truly and sincerely acknowledge, profess, testify and declare, that the Commonwealth of Massachusetts is, and of right ought to be, a free, sovereign and independent state; and I do swear, that I will bear true faith and allegiance to the said Commonwealth, and that I will defend the same against traitorous conspiracies and all hostile attempts whatsoever; and that I do renounce

and abjure all allegiance, subjection and obedience to the king, queen or government of Great Britain, (as the case may be) and every other foreign power whatsoever; and that no foreign prince, person, prelate, state or potentate hath, or ought to have, any jurisdiction, superiority, preëminence, authority, dispensing or other power, in any matter, civil, ecclesiastical or spiritual, within this Commonwealth; except the authority and power which is or may be vested by their constituents in the Congress of the United States; and I do further testify and declare, that no man or body of men hath or can have any right to absolve or discharge me from the obligation of this oath, declaration or affirmation; and that I do make this acknowledgment, profession, testimony, declaration, denial, renunciation and abjuration, heartily and truly, according to the common meaning and acceptation of the foregoing words, without any equivocation, mental evasion, or secret reservation whatsoever. So help me God."

"I, A. B. do solemnly swear and affirm, that I will faithfully and impartially discharge and perform all the duties incumbent on me as \_\_\_\_\_; according to the best of my abilities and understanding, agreeably to the rules and regulations of the constitution, and the laws of the Commonwealth." "So help me God."

Provided always, that when any person, chosen or appointed as aforesaid, shall be of the denomination of the people called Quakers, and shall decline taking the said oaths, he shall make his affirmation in the foregoing form, and subscribe the same, omitting the words "*I do swear*," "*and abjure*," "*oath or*," "*and abjuration*," in the first oath; and in the second oath, the words "*swear and*;" and in each of them the words "*So help me God*;" subjoining instead thereof, "*This I do under the pains and penalties of perjury*."

And the said oaths or affirmations shall be taken and subscribed by the governor, lieutenant governor, and counsellors, before the president of the senate, in the presence of the two houses of assembly; and by the senators and representatives first elected under this constitution, before the president and five of the council of the former constitution; and forever afterwards before the governor and council for the time being; and by the residue of the officers aforesaid, before such persons, and in such manner, as from time to time shall be prescribed by the Legislature.

II. No governor, lieutenant governor, or judge of the supreme judicial court, shall hold any other office or place, under the authority of this Commonwealth, except such as by this constitution they are admitted to hold, saving that the judges of the said court may hold the offices of justices of the peace through the State; nor shall they hold any other place or office, or receive any pension or salary from any other state or government or power whatever.

No person shall be capable of holding or exercising at the same time, within this State, more than one of the following offices, viz.: judge of probate—sheriff—register of probate—or register of deeds;



and never more than any two offices, which are to be held by appointment of the governor, or the governor and council, or the senate, or the house of representatives, or by the election of the people of the State at large, or of the people of any county, military offices, and the offices of justices of the peace excepted, shall be held by one person.

No person holding the office of judge of the supreme judicial court—secretary—attorney general—solicitor general—treasurer or receiver general—judge of probate—commissary general—president, professor, or instructor of Harvard College—sheriff—clerk of the house of representatives—register of probate—register of deeds—clerk of the supreme judicial court—clerk of the inferior court of common pleas—or officer of the customs, including in this description naval officers—shall at the same time have a seat in the senate or house of representatives; but their being chosen or appointed to, and accepting the same, shall operate as a resignation of their seat in the senate or house of representatives; and the place so vacated shall be filled up.

And the same rule shall take place in case any judge of the said supreme judicial court, or judge of probate, shall accept a seat in council; or any counsellor shall accept of either of those offices or places.

And no person shall ever be admitted to hold a seat in the Legislature, or any office of trust or importance under the government of this Commonwealth, who shall, in the due course of law, have been convicted of bribery or corruption, in obtaining an election or appointment.

III. In all cases, where sums of money are mentioned in this constitution, the value thereof shall be computed in silver at six shillings and eight pence per ounce; and it shall be in the power of the Legislature, from time to time, to increase such qualifications, as to property, of the persons to be elected to offices, as the circumstances of the Commonwealth shall require.

IV. All commissions shall be in the name of the Commonwealth of Massachusetts, signed by the governor, and attested by the secretary or his deputy, and have the great seal of the Commonwealth affixed thereto.

V. All writs, issuing out of the clerk's office in any of the courts of law, shall be in the name of the Commonwealth of Massachusetts; they shall be under the seal of the court from whence they issue; they shall bear test of the first justice of the court to which they shall be returnable, who is not a party, and be signed by the clerk of such court.

VI. All the laws, which have heretofore been adopted, used, and approved in the province, colony or state of Massachusetts Bay, and usually practised on in the courts of law, shall still remain and be in full force, until altered or repealed by the Legislature; such parts only excepted as are repugnant to the rights and liberties contained in this constitution.

VII. The privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this Commonwealth in the most free, easy, cheap, expeditious and ample manner; and shall not be suspended by the Legislature, except upon the most urgent and pressing occasions, and for a limited time not exceeding twelve months.

VIII. The enacting style, in making and passing all acts, statutes and laws, shall be—"Be it enacted by the senate and house of representatives, in General Court assembled, and by the authority of the same."

IX. To the end there may be no failure of justice, or danger arise to the Commonwealth, from a change of the form of government—all officers, civil and military, holding commissions under the government and people of Massachusetts Bay in New England, and all other officers of the said government and people, at the time this constitution shall take effect, shall have, hold, use, exercise and enjoy all the powers and authority to them granted or committed, until other persons shall be appointed in their stead; and all courts of law shall proceed in the execution of the business of their respective departments; and all the executive and legislative officers, bodies and powers shall continue in full force, in the enjoyment and exercise of all their trusts, employments and authority, until the General Court and the supreme and executive officers under this constitution are designated and invested with their respective trusts, powers and authority.

X. In order the more effectually to adhere to the principles of the constitution, and to correct those violations which by any means may be made therein, as well as to form such alterations as from experience shall be found necessary—the General Court, which shall be in the year of our Lord one thousand seven hundred and ninety-five, shall issue precepts to the selectmen of the several towns, and to the assessors of the unincorporated plantations, directing them to convene the qualified voters of their respective towns and plantations, for the purpose of collecting their sentiments on the necessity or expediency of revising the constitution, in order to amendments.

And if it shall appear by the returns made, that two thirds of the qualified voters throughout the State, who shall assemble and vote in consequence of the said precepts, are in favor of such revision or amendment, the General Court shall issue precepts, or direct them to be issued from the secretary's office to the several towns, to elect delegates to meet in convention for the purpose aforesaid.

The said delegates to be chosen in the same manner and proportion as their representatives in the second branch of the Legislature are by this constitution to be chosen.

XI. This form of government shall be enrolled on parchment, and deposited in the secretary's office, and be a part of the laws of the land; and printed copies thereof shall be prefixed to the book containing the laws of this Commonwealth, in all future editions of the said laws.

## ARTICLES OF AMENDMENT.

## ARTICLE FIRST.

If any bill or resolve shall be objected to, and not approved by the governor; and if the General Court shall adjourn within five days after the same shall have been laid before the governor for his approbation, and thereby prevent his returning it with his objections, as provided by the constitution; such bill or resolve shall not become a law, nor have force as such.

## ARTICLE SECOND.

The General Court shall have full power and authority to erect and constitute municipal or city governments, in any corporate town or towns in this Commonwealth, and to grant to the inhabitants thereof, such powers, privileges and immunities, not repugnant to the constitution, as the General Court shall deem necessary or expedient for the regulation and government thereof; and to prescribe the manner of calling and holding public meetings of the inhabitants, in wards or otherwise, for the election of officers under the constitution, and the manner of returning the votes given at such meetings: Provided, that no such government shall be erected or constituted in any town not containing twelve thousand inhabitants; nor unless it be with the consent, and on the application of a majority of the inhabitants of such town, present and voting thereon, pursuant to a vote at a meeting duly warned and holden for that purpose: and provided also, that all by-laws, made by such municipal or city government, shall be subject, at all times, to be annulled by the General Court.

## ARTICLE THIRD.

Every male citizen of twenty-one years of age and upwards, (excepting paupers and persons under guardianship) who shall have resided within the Commonwealth one year, and within the town or district in which he may claim a right to vote, six calendar months, next preceding any election of governor, lieutenant governor, senators or representatives, and who shall have paid, by himself or his parent, master or guardian, any state or county tax, which shall, within two years next preceding such election, have been assessed upon him in any town or district of this Commonwealth; and also every citizen who shall be by law exempted from taxation, and who shall be in all other respects qualified as above mentioned, shall have a right to vote in such election of governor, lieutenant governor, senators and representatives, and no other person shall be entitled to vote in such elections.

## ARTICLE FOURTH.

Notaries public shall be appointed by the governor, in the same manner as judicial officers are appointed, and shall hold their offices during seven years, unless sooner removed by the governor, with the consent of the council, upon the address of both houses of the Legislature.

In case the office of secretary or treasurer of the Commonwealth shall become vacant from any cause during the recess of the General Court, the governor, with the advice and consent of the council, shall nominate and appoint, under such regulations as may be prescribed by law, a competent and suitable person to such vacant office, who shall hold the same, until a successor shall be appointed by the General Court.

Whenever the exigencies of the Commonwealth shall require the appointment of a commissary general, he shall be nominated, appointed and commissioned in such manner as the Legislature may by law prescribe.

All officers commissioned to command in the militia, may be removed from office in such manner as the Legislature may, by law, prescribe.

#### ARTICLE FIFTH.

In the elections of captains and subalterns of the militia, all the members of their respective companies, as well those under, as those above the age of twenty-one years, shall have a right to vote.

#### ARTICLE SIXTH.

Instead of the oath of allegiance prescribed by the Constitution, the following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military, under the government of this Commonwealth, before he shall enter upon the duties of his office, to wit :

“ I, A. B., do solemnly swear that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the constitution thereof. *So help me God.*”

Provided, that when any person shall be of the denomination called Quakers, and shall decline taking said oath, he shall make his affirmation in the foregoing form, omitting the word “swear” and inserting instead thereof the word “affirm,” and omitting the words “So help me God,” and subjoining instead thereof, the words, “This I do, under the pains and penalties of perjury.”

#### ARTICLE SEVENTH.

No oath, declaration or subscription, excepting the oath prescribed in the preceding article, and the oath of office, shall be required of the governor, lieutenant governor, counsellors, senators or representatives, to qualify them to perform the duties of their respective offices.

#### ARTICLE EIGHTH.

No judge of any court in this Commonwealth, (except the court of sessions) and no person holding any office under the authority of the United States, (postmasters excepted) shall at the same time hold the office of governor, lieutenant governor or counsellor, or have a seat in the senate or house of representatives of this Commonwealth; and no judge of any court in this Commonwealth, (except the court of sessions) nor the attorney general, solicitor

general, county attorney, clerk of any court, sheriff, treasurer and receiver general, register of probate, nor register of deeds, shall continue to hold his said office after being elected a member of the Congress of the United States and accepting that trust; but the acceptance of such trust, by any of the officers aforesaid, shall be deemed and taken to be a resignation of his said office; and judges of the courts of common pleas shall hold no other office under the government of this Commonwealth, the office of justice of the peace and militia offices excepted.

#### ARTICLE NINTH.

If at any time hereafter any specific and particular amendment or amendments to the constitution be proposed in the General Court, and agreed to by a majority of the senators and two thirds of the members of the house of representatives present and voting thereon; such proposed amendment or amendments shall be entered on the journals of the two houses, with the yeas and nays taken thereon, and referred to the General Court then next to be chosen, and shall be published; and if, in the General Court next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of the senators and two thirds of the members of the house of representatives present and voting thereon, then it shall be the duty of the General Court to submit such proposed amendment or amendments to the people, and if they shall be approved and ratified by a majority of the qualified voters voting thereon, at meetings legally warned and holden for that purpose, they shall become part of the constitution of this Commonwealth.

#### ARTICLE TENTH.

[Adopted by the Legislatures of 1829-30 and 1830-1; approved and ratified by the people, May 11, 1831.]

The political year shall begin on the first Wednesday of January instead of the last Wednesday of May, and the General Court shall assemble every year on the said first Wednesday of January, and shall proceed, at that session, to make all the elections, and do all the other acts, which are, by the constitution, required to be made and done at the session which has heretofore commenced on the last Wednesday of May. And the General Court shall be dissolved on the day next preceding the first Wednesday of January, without any proclamation or other act of the governor. But nothing herein contained shall prevent the General Court from assembling at such other times as they shall judge necessary, or when called together by the governor. The governor, lieutenant governor, and counsellors, shall also hold their respective offices for one year next following the first Wednesday of January, and until others are chosen and qualified in their stead.

The meeting for the choice of governor, lieutenant governor, senators and representatives, shall be held on the second Monday of November in every year; but meetings may be adjourned,

if necessary, for the choice of representatives, to the next day, and again to the next succeeding day, but no further. But in case a second meeting shall be necessary for the choice of representatives, such meetings shall be held on the fourth Monday of the same month of November.

All the other provisions of the constitution, respecting the elections and proceedings of the members of the General Court, or of any other officers or persons whatever, that have reference to the last Wednesday of May as the commencement of the political year, shall be so far altered, as to have like reference to the first Wednesday of January.

This article shall go into operation on the first day of October, next following the day when the same shall be duly ratified and adopted as an amendment of the constitution; and the governor, lieutenant governor, counsellors, senators, representatives, and all other State officers who are usually chosen, and who shall be chosen for the current year, when the same shall go into operation, shall hold their respective offices until the first Wednesday in January then next following, and until others are chosen and qualified in their stead, and no longer; and the first election of the governor, lieutenant governor, senators and representatives, to be had in virtue of this article, shall be had conformably thereunto, in the month of November following the day on which the same shall be in force and go into operation, pursuant to the foregoing provision.

All the provisions of the existing constitution, inconsistent with the provisions herein contained, are hereby wholly annulled.

#### ARTICLE ELEVENTH.

[Adopted by the Legislatures of 1832 and 1833; approved and ratified by the people, November 11, 1833.]

Instead of the third article of the bill of rights, the following modification and amendment thereof is substituted:

As the public worship of God, and instructions in piety, religion, and morality, promote the happiness and prosperity of a people, and the security of a republican government; therefore, the several religious societies of this Commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers, to contract with them for their support, to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary expenses: And all persons belonging to any religious society shall be taken and held to be members, until they shall file with the clerk of such society a written notice declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract which may be thereafter made or entered into by such society: And all religious sects and denominations, demeaning themselves peaceably, and as good citizens of the Commonwealth, shall be equally under the protection of the law; and no subordi-

nation of any one sect or denomination to another shall ever be established by law.

ARTICLE TWELFTH.

[Adopted by the Legislatures of 1835 and 1836, approved and ratified by the people Nov. 11, 1836, and promulgated March 24, 1837.]

In order to provide for a representation of the citizens of this Commonwealth, founded upon the principles of equality, a census of the ratable polls in each city, town, and district of the Commonwealth, on the first day of May, shall be taken and returned into the Secretary's office, in such manner as the Legislature shall provide within the month of May, in the year of our Lord one thousand eight hundred and thirty-seven, and in every tenth year thereafter in the month of May, in manner aforesaid; and each town or city having three hundred ratable polls at the last preceding decennial census of polls, may elect one representative, and for every four hundred and fifty ratable polls in addition to the first three hundred, one representative more.

Any town having less than three hundred ratable polls shall be represented thus; the whole number of ratable polls, at the last preceding decennial census of polls, shall be multiplied by ten, and the product divided by three hundred, and such town may elect one representative as many years within ten years as three hundred is contained in the product aforesaid.

Any city or town having ratable polls enough to elect one or more representatives, with any number of polls beyond the necessary number, may be represented as to that surplus number by multiplying such surplus number by ten, and dividing the product by four hundred and fifty; and such city or town may elect one additional representative as many years within the ten years as four hundred and fifty is contained in the product aforesaid.

Any two or more of the several towns and districts may, by consent of a majority of the legal voters present at a legal meeting in each of said towns and districts respectively, called for that purpose and held previous to the first day of July, in the year in which the decennial census of polls shall be taken, form themselves into a representative district, to continue until the next decennial census of polls, for the election of a representative or representatives; and such district shall have all the rights, in regard to representation, which would belong to a town containing the same number of ratable polls.

The governor and council shall ascertain and determine, within the months of July and August, in the year of our Lord one thousand eight hundred and thirty-seven, according to the foregoing principles, the number of representatives which each city, town and representative district is entitled to elect, and the number of years within the period of ten years, then next ensuing, that each city, town and representative district may elect an additional representative; and where any town has not a sufficient number of polls to elect a representative each year, then how many years within the

ten years such town may elect a representative ; and the same shall be done once in ten years thereafter, by the governor and council, and the number of ratable polls in each decennial census of polls shall determine the number of representatives which each city, town and representative district may elect as aforesaid ; and when the number of representatives, to be elected by each city, town or representative district, is ascertained and determined as aforesaid, the governor shall cause the same to be published forthwith for the information of the people, and that number shall remain fixed and unalterable for the period of ten years.

All the provisions of the existing constitution inconsistent with the provisions herein contained, are hereby wholly annulled.

#### ARTICLE THIRTEENTH.

[Adopted by the Legislatures of 1839 and 1840, approved and ratified by the people, April 6, 1840, and promulgated April 17, 1840.\*]

A census of the inhabitants of each city and town, on the first day of May, shall be taken, and returned into the secretary's office on or before the last day of June, of the year 1840, and of every tenth year thereafter, which census shall determine the apportionment of senators and representatives for the term of ten years.

The several senatorial districts now existing shall be permanent. The senate shall consist of forty members ; and in the year 1840 and every tenth year thereafter, the governor and council shall assign the number of senators to be chosen in each district, according to the number of inhabitants in the same. But, in all cases, at least one senator shall be assigned to each district.

The members of the house of representatives shall be apportioned in the following manner : every town or city containing twelve hundred inhabitants may elect one representative ; and twenty-four hundred inhabitants shall be the mean increasing number which shall entitle it to an additional representative.

Every town containing less than twelve hundred inhabitants, shall be entitled to elect a representative as many times, within ten years, as the number one hundred and sixty is contained in the number of the inhabitants of said town.

Such towns may also elect one representative for the year in which the valuation of estates within the Commonwealth, shall be settled.

Any two or more of the several towns may, by consent of a majority of the legal voters present at a legal meeting, in each of said towns respectively, called for that purpose, and held before the first day of August in the year 1840, and every tenth year thereafter, form themselves into a representative district, to continue for the term of ten years ; and such district shall have all the rights, in regard to representation, which would belong to a town containing the same number of inhabitants.

\* [The vote of the people, April 6, 1840, on ratifying the thirteenth amendment, was 24,884 affirmative, to 4,912 negative.]



The number of inhabitants which shall entitle a town to elect one representative, and the mean increasing number which shall entitle a town or city to elect more than one, and also the number by which the population of towns, not entitled to a representative every year, is to be divided, shall be increased respectively, by one tenth of the numbers above mentioned, whenever the population of the Commonwealth shall have increased to 770,000, and for every additional increase of 70,000 inhabitants, the same addition of one tenth shall be made respectively to the said numbers above mentioned.

In the year of each decennial census the governor and council shall, before the first day of September, apportion the number of representatives which each city, town, and representative district is entitled to elect, and ascertain how many years, within ten years, any town may elect a representative which is not entitled to elect one every year, and the governor shall cause the same to be published forthwith.

Nine counsellors shall be annually chosen from among the people at large, on the first Wednesday of January, or as soon thereafter as may be, by the joint ballot of the senators and representatives, assembled in one room, who shall, as soon as may be, in like manner fill up any vacancies that may happen in the council, by death, resignation or otherwise. No person shall be elected a counsellor who has not been an inhabitant of this Commonwealth for the term of five years immediately preceding his election; and not more than one counsellor shall be chosen from any one senatorial district in the Commonwealth.

No possession of a freehold, or of any other estate, shall be required as a qualification for holding a seat in either branch of the General Court, or in the executive council.

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## ERRATA.

Page 32, the note at the bottom should be enclosed in square brackets [ ].

Page 327, first line, for "Mr. Cranston of Rochester," read "Mr. Cranston of Marlborough."

Page 521, line 23, insert STOWELL between PRESCOTT and STURGEIS.



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